

## A1. Discussion of Evidence

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## A1. Discussion of Evidence

### 1. Introduction

- 1.1. Evidence of relevance to the status of Huddersfield 231 now available consists of:
- Documentary and user evidence submitted by Mr & Mrs Bradley <sup>1</sup> in relation to two Definitive Map Modification Order (DMMO) applications (files 159 and 182).
  - Further user evidence submitted in response to the making of the DMMO applications and subsequent investigation.
  - Various documentary evidence discovered during the process of investigation of the DMMO applications.
  - Additional material presented in objection to and in support of an opposed DMMO at a Public inquiry in January / February 2019.
- 1.2. This evidence was considered by the Inspector appointed by the Secretary of State, along with evidence in chief given at the public inquiry. The evidence, and legal arguments made by both sides, are considered in detail in the Order Decision of 17 June 2019. This is included in Appendix B to this report.
- 1.3. It is considered that the Order Decision accurately summarised the *evidence* heard. However, some of the Inspector's conclusions regarding the evidence and his application of the law have been challenged. This includes by application to the High Court for Judicial Review.
- 1.4. It was conceded by the Secretary of State and the Council that when considering the question of common law dedication and user evidence the Inspector failed to take full account of the significance of the recording of Huddersfield 231 as a Road Used as a Public Path (RUPP) on the first Definitive Map and Statement for the Huddersfield area (the 'first DMS') published by West Yorkshire Metropolitan County Council (WYMCC) in 1975. That *may* have affected the Decision made. As a result, the DMMO was quashed by means of a Consent Order.
- 1.5. The evidence has been thoroughly re-examined as a result of the successful High Court challenge. In particular, the reconsideration of evidence of use in the period prior to the production of the first DMS in 1975. Further consideration has also been given to the process and procedures under the National Parks and Access to the Countryside Act 1949 in relation to the development of the first DMS. Additionally, to the review / special review of the first DMS in the late 1970s / early 1980s, which resulted in the publication of the West Yorkshire County Council Modified Definitive Map and Statement in 1985 (the current DMS).
- 1.6. When reconsidering the evidence as a whole, officers have been mindful of the other grounds contained with the High Court Claim that were not conceded in the Consent Order. It *may* be possible, on re-analysis of all the evidence now available, for officers to reach different conclusions to the Inspector in respect of various matters.

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<sup>1</sup> Mr & Mrs Bradley were the applicants in DMMO applications 159 and 182, the sole affected owners / occupiers of affected land, and the sole objectors to a DMMO made in 2017.

- 1.7. Close attention has also been given to witness statements submitted by the Bradleys in support of their applications for DMMOs, and later evidence given by them and, for example, close family members and associates.
- 1.8. Members are requested to consider, alongside the commentary provided in this document, the Order Decision included in Appendix B (subject to the cautions described at paragraphs 1.4 and 1.6 above).

## **2. Historical maps and related documentary evidence (not including material relating to the development of the Definitive Map and Statement)**

- 2.1. Members are requested to take into account the analysis of various historical documentary evidence described paragraphs 3.14 to 3.27 of the Leeds City Council Report and in paragraphs 12 to 18 of the Order Decision. In particular, in respect of historical map evidence, evidence relating to quarrying affecting the route at various times, and various other documentary evidence covering the period prior to the development of the DMS from the early 1950s. Also, to documents from the time of the purchase of Nether Moor Farm by members of the Bradley family in the 1950s and other documents from the 1950s / 1960s not directly related to the development of the DMS. It is not necessary to describe all the evidence here.<sup>2</sup>
- 2.2. Evidence relating to development of the Definitive Map and Statement or its review is considered separately in more detail. Several documents that provide evidence regarding gates, stiles or other structures that might be considered limitations to any right of way are described and considered separately later in this discussion of evidence.
- 2.3. The Order Route is shown, in whole or part, on various maps from 1804 onwards. Ordnance Survey maps indicate that for an indeterminate time between 1892 and 1916 part of the route ran on a different alignment due to quarrying. The alteration of the route during this period does not itself mean that the way could not be a public right of way of some description, but it is considered less likely that such changes would take place on a public carriageway than if the way were a public footpath or bridleway.
- 2.4. Various maps indicate the physical existence of a cross field path joining the route in question at or near point B west of Nether Moor Farm. Including (but not limited to) a township map of 1804, on which this path is described as a 'foot road'. (Item E in background documents to the Leeds Report). While not conclusive evidence of its status, this is consistent with a path later recorded on the first and current DMS as public footpath Huddersfield 233 ('path 233'). It is unlikely that, if a public right of way, that path existed as a cul-de-sac; the logical continuation is along the line of modern Huddersfield 231 to / from Sandy Lane at point A. This field path is also shown on the first OS map published in 1854. This also shows the physical existence of what is now Huddersfield 231.

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<sup>2</sup> The Leeds City Council Report is available at <https://democracy.kirklees.gov.uk/documents/s20663/Leeds%20DMMO%20report%20Hud231.pdf>

The published background documents including the historical documentary evidence are found at <https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?ID=1411&RPID=507337344>

## Conclusions regarding historical documentary evidence described above

- 2.5. While indicating the physical existence of a route of some antiquity over the route of Huddersfield 231, the historical map and other historical documentary evidence is generally fairly neutral in terms of the status of the route, though more supportive of the first part of the route from point A at Sandy Lane to path 233 at / near point B being a public footpath at the very least. The documentary evidence provides little *direct* evidence in support of the rest of the route of Huddersfield 231 having public status (particularly as a vehicular highway, noting the alterations in the route due to quarrying), although the evidence considered is not incompatible with the existence of a public right of way of some type.
- 2.6. The earlier documentary evidence should be considered alongside all other available evidence when considering what rights may actually subsist. In particular the evidence should be taken into account when considering whether, on the balance of probabilities, there is evidence to outweigh the *Trevelyan* presumption that the route was correctly recorded as a RUPP on the first Definitive Map and Statement in 1975.

### 3. The preparation of the first Definitive Map and Statement

- **Extracts from County Borough of Huddersfield “Draft Schedule of Rights of Way alleged to exist on 1<sup>st</sup> September 1952 and shown on the Draft Map”. Dated 7 Nov 1952. (Item T in Published Background Documents to the Leeds Report).**
- **Extract from first Draft Map. (Item AA).<sup>3</sup>**
- **Advertisement in Huddersfield Examiner of notice re preparation of Draft Map and Statement. Dated 12 November 1952. (Item U).**
- **Schedule of Objections (“National Parks and Access to the Countryside Act 1949 Draft Rights of Way Map Objections”. Dated 3 June 1953. (Item V).**

3.1. In 1951 Huddersfield County Borough Council (‘HCBC’) commenced a survey of public rights of way under Part IV of the National Parks and Access to the Countryside Act 1949 (the ‘1949 Act’). Various outside bodies assisted with the initial survey. A Draft Map and Statement<sup>4</sup> (the ‘first Draft Map and Statement’) was prepared in 1952 and placed on deposit for public inspection. Objections were received to inclusion of certain routes in the first Draft Map and Statement: the ‘Schedule of Objections’ includes ‘remarks’ by council officers.

3.2. The ‘Relevant Date’ of the first Draft Map was 1<sup>st</sup> September 1952.<sup>5</sup>

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<sup>3</sup> The surviving copy of the first Draft Map may be a slightly later ‘working copy’. It is dated 1956. The details shown match the Draft Statement.

<sup>4</sup> The Draft Map was to include footpaths, bridleways and ‘roads used as public paths’ which, in the opinion of the Council, existed or were reasonably alleged to exist at the ‘relevant date’. Section 27 of the National Parks and Access to the Countryside Act 1949.  
<http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97/section/27/enacted>

<sup>5</sup> The ‘relevant date’ in relation to the preparation of the Draft Map was defined in s27(3) of the 1949 Act as “...such date, not being earlier than six months before the date on which notice of the preparation of the draft map is published in accordance with the following provisions of this Part of this Act, as the surveying authority may determine.”. The relevant date was to be specified in the accompanying Statement, in this case being 1<sup>st</sup> September 1952.

- 3.3. The way later recorded as Huddersfield 231 was included within the description in the schedule as path 460, overlapping with part of the description of path 461 (which as described would be co-extensive with that part of the way in question west of Nether Moor Farm as well as modern path 233).
- 3.4. Both paths were referred to as footpaths. The schedule indicates that these paths had been walked by 'East District Rangers' in August 1951. I.e. senior members of the Girl Guiding movement rather than public officials.
- 3.5. Path 460 was described as "Footpath from Nether Moor Road leading along north side of Nether Moor Farm" and stated to be 'unobstructed'.
- 3.6. Further detail was recorded regarding path 461, including stiles. The description included: "FOOTPATH from Nether Moor Road... path turns S. by W. to Nether Moor farm on left. Over stepping stile into lane NE – S,W back over adjacent stile, leading to Stoney Lane 12'-" wide bounded by farm buildings.... From farm 200 yds. Along Lane to Sandy Lane at Greengate Knoll."
- 3.7. The first page of the first Draft Statement / Schedule was titled "County Borough of Huddersfield Footpath Survey", suggesting that the focus in the minds of those carrying out the survey under the 1949 Act was on pedestrian rather than higher rights. Although some routes described as 'Bridle Road' or 'Cart Road (Footpath)' were included.
- 3.8. No objections were received to the recording of either route 460 or 461 on the first Draft Map and Statement, or in relation to the suggested status of footpath (as per the schedule of objections).
- 3.9. There is no surviving documentation to indicate the reasons why the route in question was included in the first Draft Map and Statement as a public footpath. Although the status suggested was lesser than that ultimately recorded on the first DMS (which recorded the route as a RUPP), this does not indicate an error occurred in recording public rights in general. The decision of HCBC to include the route in dispute, and other routes, on the draft map would have been based on evidence then available. This may have included the evidence of the oldest inhabitants then living. Almost 70 years on, inevitably such evidence has been lost or forgotten. The first Draft Map and Statement provides evidence that the way in question was at least a public footpath by the early 1950s.

**'Note for Town Clerk – Survey of Rights of Way'. E.V. Hartley, Deputy Town Clerk 31<sup>st</sup> July 1965. (Item DD in Background Documents to Leeds Report).**

- 3.10. This note was made preparatory to a meeting between the Town Clerk and the Ministry of Housing and Local Government. The note describes the Survey, publication of the first Draft Map and receipt of 20 objections. The matter then appears to have lain dormant for 13 years. In 1965 it was decided to progress this, but, in view of the passage of time, it was considered that a new survey would be carried out. The Housing and Town Planning Committee agreed that the Huddersfield Civic Society should be asked to help.
- 3.11. The Ministry raised issue with this approach, initially considering that HCBC should carry on from the stage reached and not start again. The Borough Engineer (BE) and DTC (Deputy Town Clerk) suggested a compromise, with preparation of a new draft map, but reconsidering all objections received originally as if they were objections to the new map. This was to be put to the 'legal side' at the Ministry. A letter was to be

provided setting out HCBC's position. The question of a fresh map had not been resolved, but a fresh survey was to be carried out by the Civic Society regardless.

- 3.12. The documents clearly indicate that a further survey was carried out per the 'Note to the Town Clerk from 1965' and a second Draft Map and Statement published. It must be presumed that the approach suggested was acceptable to the Ministry and its lawyers and was not considered a fatal flaw in the process of developing a Definitive Map and Statement under the 1949 Act. The process under the 1949 Act was effectively re-started.

**'Walking Plan', c1965. (Item EE in Leeds Report)**

- 3.13. The 1965 plan relates to the further survey carried out in 1965 by the Huddersfield Civic Society, as mentioned at paragraphs 3.10 to 3.12 above. The 1965 plan shows the route in question (modern Huddersfield 231) as a Road Used as a Public Path (RUPP) number 410. (The earlier number 460 was also given but struck through). Modern path 233 is also shown, as a footpath numbered 409 (number 461 struck through). No original survey schedule describing the routes appears to have survived; however, a detailed description is given in a further draft 'schedule' (i.e. the second Draft Statement) produced in 1966.

**Second Draft Map and Statement (Schedule). Relevant Date 20 April 1966 (Items FF and HH in appendices to Leeds Report)**

- 3.14. The second Draft Map prepared in 1966 shows the way in question as RUPP no. Huddersfield 410. The way was described in the second Draft Statement as 'Footpath (CRF)':

*"Commences in Sandy Lane at N side of Greengate Knoll. Earth and stone about 10' wide with small grass verges and dry-stone walls either side. (FP.409 joins from left at Nether Moor Farm.) Continues in N.E direction between farm buildings. Past buildings 10'-12' wide, earth road with grass verges varying from 5'-10'. Grassland. Ends at junction with Nether Moor Road. (December 1965 by Robert E. Clayton (6.3.1966 by J. Workman)."*

- 3.15. The path now known as public footpath Huddersfield 233 was also included in the second Draft Map and Statement as footpath 409.
- 3.16. There is no record of any objection having been made to the inclusion of either route in the second Draft Map and Statement.
- 3.17. It is evident from the statement that the way in question was walked again twice in 1965 and 1966 before the second Draft Map and Statement was prepared.
- 3.18. The term 'Road Used as a Public Path' was defined in section 27(6) of the 1949 Act as "... a highway, other than a public path [i.e., footpath or bridleway], used by the public mainly for the purposes for which footpaths or bridleways are so used". The term 'Footpath (CRF)' in the second Draft Statement entry is a variant on the non-statutory term 'CRF' meaning public carriage or cart road mainly used as a footpath. Alongside CRB (meaning public carriage or cart road used mainly as a bridleway),

these are terms which were recommended for use as symbols along with FP and BW when marking maps during the survey and on accompanying schedules.<sup>6</sup>

- 3.19. The terms CRF and CRB were not intended for subsequent use by surveying authorities in the Definitive Map and Statement. In practice some authorities – including HCBC – misunderstood the terms and used them in their draft and subsequently definitive maps and statements. In the case of Huddersfield, in the statement entries accompanying the depiction of RUPPs on the Map. Use of the term or symbol does not confirm the existence of public vehicular rights of way.
- 3.20. Around 14 years had passed between the survey and preparation of the first Draft Map and Statement and the survey for / preparation of a second Draft Map. It is possible that some additional public rights of way not previously described in the first Draft Map and Statement would have come into existence in the intervening period, including ways which were only previously footpaths but had acquired ‘higher’ rights - i.e. had become public carriageways or public bridleways.
- 3.21. It is possible that the inclusion of the route in question as a RUPP instead of a footpath on the second Draft Map and Statement reflected a changed situation on the ground and that, assuming the way was a footpath by 1952, higher rights than footpath had subsequently come into existence. Or that it was reasonable to allege that by the mid-1960s that was the case. Although described as a (public) cart or carriage road mainly used as a footpath, it does not automatically mean that the only public rights that existed were pedestrian.
- 3.22. It is acknowledged that the term ‘CRF’ or ‘Footpath (CRF)’ *might* have been used erroneously by the surveyor in reference to the physical characteristics. I.e. describing a private vehicular road over which there was also a public footpath. The term is recognised to have been ambiguous and open to misinterpretation.
- 3.23. Nonetheless it appears clear, from the unchallenged inclusion of the route in the second Draft Map and Statement as a RUPP, that that a public right of way of some description existed or was reasonably alleged to exist by 1966. Available witness evidence may assist the question of whether higher rights than footpath had come into existence by the time of the preparation of the second Draft Map and Statement or would subsequently come into existence before its subsequent inclusion in the first DMS in 1975. These possibilities will be considered in further detail later in this discussion of evidence
- 3.24. The subsequent Provisional and Definitive Maps were ultimately based on the second Draft Map and carry the ‘Relevant Date’ associated with the second Draft Map not the first (20 April 1966). It is considered that less weight should be placed on the status recorded on the first Draft Map and Statement than the second. The original survey (and Draft Map and Statement) from the early 1950s was effectively abandoned and the process started afresh in the 1960s. There was no provisional or definitive map that followed directly on from the first draft map. By contrast, further opportunities *were* available, through the statutory process of preparation of the Provisional and Definitive Maps and Statements that followed on from the second Draft Map and Statement, for the landowners to challenge the recording of a RUPP.

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<sup>6</sup> See Circular 81 of 1950 and accompanying memorandum ‘Surveys and Maps of Public Rights of Way’. Copies of these documents are included at pages 36-47 within document ‘BBR05’ in Appendix H to this report.

**Note for Highways and Sewerage Committee, 11 May 1972. (Item MM in Background Documents to Leeds Report).**

**Provisional Map and Statement (Items JJ and NN)**

- 3.25. A note for the HCBC Highways and Sewerage Committee dated 11 May 1972 confirmed that “All objections to public footpaths proposed to be included in the Draft Map and Statement have now been resolved, and the Draft Map and Statement can therefore be regarded as concluded”. The Draft Map and Statement as amended would become the Provisional Map and Statement. The note requested formal resolution to this effect and to subsequent advertising of the Provisional Map and Statement.
- 3.26. The Provisional Map depicted the way in question as a RUPP, no. 410, as per the second Draft Map. The surviving copy of the Provisional Statement appears to be a version of the second draft, with pencilled amendments (although with no changes to the entry for RUPP no. 410).<sup>7</sup>
- 3.27. The Provisional Map and Statement had been prepared prior to the abolition of HCBC in 1974. Responsibility for preparation of the Definitive Map and Statement for the former County Borough of Huddersfield transferred in April 1974 to the West Yorkshire Metropolitan County Council. It is understood that the officer at the West Riding County Council who had been responsible for managing the Definitive Map was a Mr Eggins. That role had continued at the new WYMCC, with additional responsibility for the preparation and management of maps and statements for the various former County Boroughs, including Huddersfield.

**Memo from Executive Director, Transportation and Traffic to Director of Administration, WYMCC, 5 Jun 1974, re Huddersfield Provisional Map. (Item OO in Background papers to the Leeds Report).**

- 3.28. This memorandum (the ‘1974 Memo’) is clearly a response from the officer responsible (Mr Eggins<sup>8</sup>) to a question of when the Map and Statement for the Huddersfield area (then at Provisional stage), would be ready for deposit at Definitive stage. Evidently the format was considered significantly at odds with the format developed by the West Riding County Council (for areas of the county not within County Boroughs / excluded areas), and latterly the WYMCC. The writer of the memo was critical of this, and of the difficulty and resources required in translating the Huddersfield Provisional Map and Statement into “*a satisfactory state ready for a deposit*”. It was observed that:

*“the routes are shown in colour with out of date notations and classifications which are non standard...”*

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<sup>7</sup> The relevant date of 20 April 1966 indicated on the statement had been altered to 31 August 1973. This is erroneous as section 30(4) of the 1949 Act indicates that the provisional statement should include a note of the relevant date specified in the corresponding draft statement.

<sup>8</sup> The Memorandum was signed by and sent in the name of A E Naylor, Executive Director Transportation and Traffic. However, it indicated that the matter was being dealt with by Mr Eggins, who is highly likely to have been the actual author, as per common practice at the time.



3.29. Most significantly Mr Eggins commented that:

*“The classifications of routes as between F.P., F.P. (CRF) & B.W. appear to depend purely on the physical characteristics with no regard to historical use either probable or actual.*

*To enable an accurate assessment to be made of the likely past use of each way it would be essential to walk at least 20% of the 595 paths listed and try to get much more local information thereon.*

*However, as such a course is impracticable at present, it is proposed that a reasonable assessment be made on a logical basis and then await the outcome of the deposit.*

*It will, therefore, take some months of very detailed and careful work with a full team plus a whole-time typist to produce maps and statements in a satisfactory state ready for a deposit.*

*It is felt that Mr Gumbley may wish to discuss at an early date the form and degree of detail to be incorporated and also the minimum width of path that should be recorded.”*

3.30. The criticism contained in the 1974 Memo was from an experienced officer, but one who had only recently taken on the task of preparation and management of maps and statements for the former Huddersfield County Borough. Therefore, his knowledge of the reasoning behind inclusion of any particular route with a particular status might have been limited. It is likely that much evidence would by that time have no longer been available to the County Council. His comments are quite general and not in the main about specific paths or ways. Nonetheless, the existence of the 1974 Memo does reduce the reliance that can be placed on the earlier material from HCBC.

3.31. The comments in the memo comments appear to have some validity. However, they do not indicate that the recording of the route in general *must* have been incorrect, merely raising a question mark regarding the classification included in the Provisional Map and Statement. It should be noted that the recording of a RUPP on the second Draft Map and the Provisional Map had thus far passed two statutory stages without objection. Nonetheless it is possible that the physical nature of the route led the surveyor to record it as a RUPP rather than a footpath.

3.32. In his Order Decision the Inspector also reached conclusions about the 1974 Memo, in particular, noting that:

*“I take this statement to indicate that routes could have been recorded with the incorrect designation, but it does not necessarily show that routes were included in the map and statement in error.”*

3.33. At the Public Inquiry, the Council's consultant also offered an opinion on the 1974 Memo and on other related documents from the 1952 Draft Map and Schedule onwards. She expressed a preference for the description of footpath given in the first (1952) Draft Map and Statement rather than the classification suggested in the second (1966) Draft Map and Statement. *In her opinion*, the way had been wrongly classified as a RUPP / CRF in 1966, based in large part on the criticism of HCBC contained in the 1974 Memo.

- 3.34. The 1974 Memo is significant evidence that must be weighed in the balance against the initial *Trevelyan* presumption that the first Definitive Map and Statement was correct.

### **1975 Huddersfield Definitive Map & Statement. (Items QQ and RR).**

#### **Notices and London Gazette advertisement. (Item PP).**

- 3.35. In spite of the reservations expressed in the 1974 Memo, by July 1975 a Definitive Map and Statement had been prepared. The notice that the DMS had been placed on deposit was published on 10 Jul 1975. The Definitive Map shows the route in question as RUPP Huddersfield 231.<sup>9</sup> The Statement described a 'Footpath (CRF)' as per the draft / provisional statements (i.e. a type of RUPP) - but with a simplified description and a recorded width of 10ft.

- 3.36. There is no evidence of any legal challenge being subsequently made in relation to the preparation of the DMS, or of any objections in relation to the earlier draft or provisional maps or statements.

- 3.37. Section 32(4)(b) of the 1949 Act states that, in relation to a Definitive Map,

*"where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid..."*

- 3.38. The conclusive presumption given in section 32(4)(b) was later confirmed by the Court of Appeal in '*R v Secretary of State for the Environment ex parte Hood (1975)*', followed by *Department of the Environment Circular 123/1977*.<sup>10</sup>

- 3.39. The date referred to in section 32(4) was the Relevant Date of 20 April 1966, being that specified in the Definitive Statement and as per the Provisional and second (1966) Draft Maps and Statements.

- 3.40. Use by pedestrians and equestrians *after* the inclusion of the route on the 1975 Definitive Map would have been 'by right', rather than 'as of right'. Such use would not count towards a qualifying period of user that would support a presumption of dedication under s31 Highways Act 1980 or from which intention to dedicate a bridleway at Common Law might be inferred.<sup>11</sup>

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<sup>9</sup> The notation on the map was that used for *either* a RUPP or a BOAT. The National Parks and Access to the Countryside (Amendment) Regulations 1970 introduced the notation to be used for a BOAT (one of 3 descriptions under which RUPPs were to be reclassified under the Countryside Act 1968). The notation was to be the same as that for RUPP, the logic being that RUPPs and BOATS would not, following a Special Review, be shown on the *same* rights of way map. See Circular 22/70 included at pages 55-56 within document 'BBR05' in Appendix H to this report.

<sup>10</sup> Circular 123/77 is included at pages 57-58 within 'BBR05' in Appendix H.

<sup>11</sup> At the previous Public Inquiry the OMA had presented legal argument that public use during the period a route was recorded on the Definitive Map could still be considered 'as of right' under some circumstances. However, having heard legal argument both for and against, the Inspector dismissed this argument

- 3.41. The conclusive evidential nature of the Definitive Map in respect of the equestrian and pedestrian rights over routes shown as RUPPs only came into play on the sealing of the first Definitive Map in 1975. The suggested status of RUPP *could* have been challenged at draft or provisional stages and the route subsequently not recorded or recorded with a different status.
- 3.42. There was no document providing legally conclusive evidence of pedestrian and equestrian rights prior to 1975. If the way in question did not in fact already carry such rights (contrary to the recording of the route in the first DMS), public use in the period up to 1975 – including equestrian use - would still have been ‘as of right’ rather than ‘by right’. Thus, evidence of such use (including equestrian use) in the period up to 1975 should be taken into account when considering whether or not public rights have come into existence. (Notwithstanding that the inclusion of a RUPP on the Definitive Map subsequently became retrospectively conclusive evidence of the existence of equestrian rights on 20 April 1966).
- 3.43. The *Trevelyan* presumption that the way was correctly recorded on the first Definitive Map may be rebutted where there is discovery of cogent evidence of some substance that would outweigh that presumption. The 1974 Memo may provide such new evidence. It is noted that the point is finally balanced, bearing in mind the assessment at paragraphs 3.30 – 3.31 above.

### **Conclusions regarding the development of the First DMS**

- 3.44. The inclusion of the way later recorded as Huddersfield 231 on the first draft map and statement as a public footpath is evidence of the existence of a public right of way on foot over the route by the early 1950s. There had been no objection to the inclusion of a public footpath. Unfortunately, the process of the development of a definitive map and statement for Huddersfield stalled at that stage.
- 3.45. The process was, however, effectively restarted with the carrying out of further survey work and preparation of a new draft map and statement in 1966. While this appears to have been irregular, it must be assumed that this approach was ultimately considered acceptable by legal officers at the Ministry of Housing and Local Government.
- 3.46. The route was recorded as a RUPP on the second Draft Map (Relevant Date of 20 April 1966) following a fresh survey. Again, that status was not challenged. Although the statement described ‘Footpath (CRF)’, a CRF is a type of RUPP. It is quite clear that the way was considered to be a public right of way of some description by 1966. It is conceivable that, even if the route was only a public footpath in the early 1950s, higher rights had come into existence by 1966.
- 3.47. The status of RUPP survived the full process without formal challenge and the route was recorded as a RUPP on the first definitive map in 1975. Inclusion of a RUPP on the Definitive Map was legally conclusive evidence that at the Relevant Date there was a public right of way on foot and a right of way on horseback or leading a horse. It did not provide conclusive evidence that the way was a public vehicular highway.
- 3.48. The critical 1974 Memo casts doubt on whether the status included on the first Definitive Map was correct. It is considered that the evidence is finely balanced. However, this evidence is sufficient to slightly outweigh the legal presumption that a RUPP was correctly recorded on the first Definitive Map in 1975. This does not in and of itself mean that the way was wrongly recorded, or that it could not have been a public right of way of another classification.

- 3.49. At paragraph 25 of the Order Decision, the Inspector also found there was no cogent evidence to show that an error occurred regarding the inclusion of the *route* in the original definitive map and statement, although he accepted that the 1974 Memo provide some evidence that the way could have been recorded with an incorrect designation. He considered that the route has a minimum status of footpath. He also took the view that it could not be determined whether any higher public rights existed at that time.
- 3.50. Although the *Trevelyan* presumption in favour of the recording of a RUPP on the first Definitive Map has been rebutted it is still possible that a public highway of a different description had come into existence or would subsequently do so. It will be necessary to consider the more recent user and other witness evidence to determine that aspect.
- 3.51. User / witness evidence may also further assist with the question of the status of the route prior to April 1966. (Such evidence would not have been available in the 1975 so could not be weighed in the balance against evidence that rebutted the presumption).
- 3.52. Evidence of use submitted by equestrians is considered at paragraphs 6.16 to 6.27. Evidence from persons associated with Nether Moor Farm is considered from paragraph 6.28.

#### 4. Review / Special Review of the Definitive Map and Statement and preparation of the Modified Definitive Map and Statement

- **“Review of Public Paths recorded as C.R.F Paths by the former Huddersfield Authority”. (Item UU in Background Documents to the Leeds Report).**
  - **“Huddersfield C.B. Review”. (Item TT).**
  - **File Note: Special Review of Public Footpaths, 20 Dec 1977. (Included in Appendix H).**
- 4.1. A formal review of the various Definitive Maps and Statements covering the whole of the Metropolitan County of West Yorkshire commenced in the late 1970s. This was a Review under section 33 of the 1949 Act<sup>12</sup> and also a Special Review - as defined in paragraph 7 of Part III of Schedule 3 to the Countryside Act 1968<sup>13</sup> - for the reclassification of Roads Used as Public Paths (RUPPs) to Byways Open to All Traffic (BOATs), bridleways or footpaths. (Hereafter referred to collectively as “the Review”).
- 4.2. The Review commenced *after* the judgment in *R v Secretary of State for the Environment, ex parte Hood* [1975] 1 QB 891, [1975] (*Hood*). This case confirmed that on a special review carried out in pursuance of the Countryside Act 1968 a council could only take away public vehicular rights, but not any other rights, without *new* evidence, or evidence not previously considered by the authority (i.e. evidence that could properly be considered at a review under section 33 of the 1949 Act as amended).

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/97/section/33/enacted>

<sup>13</sup> <http://www.legislation.gov.uk/ukpga/1968/41/schedule/3/part/III/enacted>

- 4.3. In *Hood* Lord Denning also logically found that each of the non-statutory subcategories CRF and CRB was shown in the map as a RUPP, which meant that it was shown as a 'highway, other than a 'public path', which in turn meant that it was a *public* cartway. Thus, CRF and CRB designated a public cartway used mainly for the purposes for which footpaths and bridleways are used.
- 4.4. Paragraph 10 of Schedule 3 to the 1968 Act provided:
- "The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be –*
- (a) whether any vehicular right of way has been shown to exist,*  
*(b) whether the way is suitable for vehicular traffic having regard to the position and the width of the existing right of way, the condition and state of repair of the way, and the nature of the soil,*  
*(c) where the way has been used by vehicular traffic, whether the extinguishment of vehicular rights of way would cause any undue hardship."*
- 4.5. In *Hood* the court interpreted paragraph 10 as showing that on reclassification a 'Road Used as a Public Path' could be downgraded so as to take away the vehicular rights, but not so as to take away any other rights, those of bridleway or footpath.
- 4.6. As part of the Review two schedules were produced indicating the suggested status of routes in the former Huddersfield County Borough area. These contain remarks as to the reasoning behind proposed changes in recorded status. Both documents are undated but refer to the dates of various events in late 1975 / early 1976.
- 4.7. The first schedule is titled "*Review of Public Paths recorded as C.R.F Paths by the former Huddersfield Authority*". This lists all the RUPPS (CRFs) in the 1975 Definitive Map and Statement and suggests for each a status of footpath or bridleway. (With the exception of several recommended to be removed as by then co-extensive with 'adopted' roads, etc.). No routes were suggested to be reclassified as BOATs. It is apparent from the remarks that, in most cases, the suggested reclassification would have been based on character and width, or potential for opposition to bridleway status, rather than there being *new* evidence.
- 4.8. Although it was apparent that the author of the schedule was aware of *Hood* as several comments were made referring to a 'recent High Court case', it is questionable whether most of the reasons for assigning the status of footpath or bridleway to particular paths could be considered 'new' evidence. In the case of Huddersfield 231, the suggested status was bridleway, based on its connection with maintained highway at each end together with the character and width of the path.
- 4.9. The second schedule titled "Huddersfield C.B. Review", lists *all* the paths in the former Huddersfield County Borough. For Huddersfield 231 it states "Bridlepath – amended from CRF at Definitive. Statement remains unaltered."
- 4.10. A file note dated 20 December 1977 (included in Appendix H) clearly sets out the position in *Hood*. I.e. that RUPPs cannot be re-classified as public (foot) paths in a special review under the 1968 Act because of the presumption that there are equestrian rights over RUPPs. This file summarises the position as described in Circular 123/77.<sup>14</sup>

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<sup>14</sup> Circular 123/77 is included at pages 57-58 within document 'BBR05' in Appendix H to this report.

- 4.11. In light of *Hood* and noting the advice in the 1977 file note and Circular 123/77, in the absence of *new* evidence that would show that a way was only a footpath, it would not have been possible as part of a Special Review to downgrade the status of Huddersfield 231 from RUPP to footpath.
- 4.12. Downgrading the recorded status to bridleway, as suggested in the Huddersfield CB Review might have been appropriate, based on the considerations in Paragraph 10 of Schedule 3 to the 1968 Act (included at paragraph 4.4 above), although it appears that the suggested status was based on its physical character.
- 4.13. There is no indication that there had been at that time been discovery of any 'new evidence' that would show that the way should only be recorded as a footpath or carried no public rights of way of any type.

**Draft Revision Map and Statement (Review date 1<sup>st</sup> October 1979). (Items VV and WW in Background Documents to the Leeds Report).**

**Notice dated 29 Feb 1980 and London Gazette Notice dated 25 Feb 1980 (Item YY)**

- 4.14. Huddersfield 231 was shown on the Draft Revision Map and Statement as a Byway Open to all Traffic (BOAT), with a recorded width of approximately 10ft / 3m. This is at odds with the reclassification to bridleway suggested earlier in the review process. A large number of other RUPPs were also proposed to be reclassified as BOATs.
- 4.15. It is not known what evidence was ultimately taken into account when reclassifying the various Huddersfield RUPPs. However, the intended reclassifications of RUPPs to BOATs in general would *not* have been manifestly unreasonable, taking into account confirmation from *Hood* that such routes were public carriage or cart roads. The shift in proposed classification (BOAT instead of bridleway) reflects the robust guidance in circular 123/77.
- 4.16. There is no reference in the 'General' column in the Draft Revision Statement to any gates or other structures (i.e. that would be limitations or conditions) on Huddersfield 231. However, this is a deficiency that is common to other recorded public rights of way within the former Huddersfield County Borough and does not conclusively indicate no such structures existed on Huddersfield 231 at that time. (Other evidence regarding the possible existence or otherwise of gates, stiles or other structures is considered later in this discussion of evidence).
- 4.17. The Draft Revision Map and Statement were placed on deposit for public inspection. A significant number of objections were received, in connection with various routes. No objections appear to have been submitted in relation to Huddersfield 231. It is not known conclusively whether or not the then landowners would have been aware of the proposed status of BOAT or its implications. However, there was an opportunity for them to formally object to this and no objection was made.
- 4.18. It is clear that the intention of WYMCC in the Special Review was to reclassify various Huddersfield RUPPs as BOATs through the correct process under the Countryside Act 1968. While there is no clear evidence now available to suggest the existence of public vehicular rights, the designation of BOAT would not necessarily have been unreasonable, given the terms of the Special Review described at paragraph 4.4 above.

**Abandonment of Review, Omnibus Modification Order and publication of Modified Definitive Map and Statement:**

- **Report to Traffic and Highway Committee: Review and Special Review of the Definitive Map. 28 April 1983. Resolution to support abandonment of Review. 28 Jul 1983 (Item AAA in Background Documents to the Leeds Report).**
  - **Direction to Abandon Review, 27 Jan 1984. (Item BBB).**
  - **Omnibus DMMO, 22 Oct 1985. (Item CCC).**
  - **Notices of publication of Modified Definitive Map and Statement (25 Oct 1985). (Item DDD).**
- 4.19. New procedures were introduced in the Wildlife and Countryside Act 1981, replacing the system of periodic reviews of the Definitive Map and Statement under the 1949 Act. The new procedures set out in section 53 of the 1981 Act included a duty to keep the DMS under continuous review and introduced the making of individual DMMOs in accordance with the evidence.
- 4.20. As the Review would not have been completed by the time the 1981 Act came into effect, the Secretary of State had the power to formally abandon the Review, if deemed appropriate, or allow it to continue. The opinion of WYMCC was sought.
- 4.21. A report discussing the implications of abandonment was received by the WYMCC Traffic and Highway Committee, noting that it would be appropriate for the Review to be abandoned. The report noted, in relation to the reclassification of RUPPs, only one proposed reclassification had been subject to an objection. As a result, the Secretary of State formally abandoned the Review / Special Review.
- 4.22. The procedure followed thereafter was the making on 22 October 1985 of an Omnibus Definitive Map Modification Order (the 'Omnibus Order') amending the Map and Statement to reflect those proposed changes in the Draft Revision Map and Statement that had not received objections<sup>15</sup>. A new consolidated Modified Definitive Map and Statement (the 'Modified DMS') was then immediately published, intended to include those changes that had been included in the Omnibus Order.
- 4.23. The Omnibus Order referred to modification of the DMS in consequence of the occurrence specified in section 53(3)(a) of the 1981 Act. I.e. the extinguishment, diversion or coming into existence of rights of way.
- 4.24. Additionally, the Omnibus Order modified the DMS under section 55(5) of the 1981 Act. Schedule B of the Omnibus Order listed various RUPPs which were reclassified to footpaths or bridleways. Crucially, it failed to include a list of those RUPPs in the Kirklees area which were intended to be reclassified as BOATs.
- 4.25. Nonetheless, the Modified DMS *did* include in it the routes shown as BOATs on the Draft Revision Map and Statement, including Huddersfield 231. No evidence has been found that would explain these routes being absent from the Omnibus Order. Such as an additional Order under section 55(5) of the 1981 Act or a reclassification Order under section 54 of the 1981 Act. The most logical explanation is that an error was made.

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<sup>15</sup> It was intended that any matters that had been subject to objections would be dealt with when considering / making DMMOs under the new procedures in s53 of the 1981 Act.

- 4.26. Regrettably, the omission of the Huddersfield BOATs from the Omnibus Order was compounded by an error in the notation used for Huddersfield 231. This was shown on the Modified Definitive Map by means of a solid line. The correct notation for a BOAT, as per the regulations then in effect<sup>16</sup>, was a continuous line with arrowheads alternately above and below the line. However, the Statement accompanying the map does describe the route as a BOAT. Taking the two together, it is considered that the map and statement do record a BOAT, albeit not using the correct line style as per the regulations.

### **Conclusions regarding evidence relating to the Special Review and the preparation of the Modified Definitive Map and Statement**

- 4.27. The Review of the Definitive Map, being a Special Review for reclassification of RUPPs commenced in 1976, and ultimately led to the publication of the Modified Definitive Map and Statement in 1985 following formal abandonment of the Review.
- 4.28. An early suggested status of bridleway (based on physical character) had been replaced with a reclassification as a BOAT in the Draft Revision Map and Statement. This would have taken into account the considerations in Paragraph 10 of Schedule 3 to the 1968 Act and the judgment in the Hood case.
- 4.29. While the factors taken into consideration are not now clear - such as whether or not the route *had* been used with vehicles - a classification of BOAT or bridleway might have been reasonable.
- 4.30. There is no indication from the Special Review process that the way was only a footpath, or of the discovery at the time of any new evidence that would support such a classification or support the deletion of all or part of the Huddersfield 231 from the DMS. No objection was made to the proposed recording of Huddersfield 231 as a BOAT.
- 4.31. The Review was formally abandoned. It appears that it was intended that the map be modified to show Huddersfield 231 as a BOAT as no objections had been received to the recording with this status on the Draft Revision Map and Statement.
- 4.32. The Omnibus Order, through omission, failed to reclassify any of the Huddersfield RUPPS to BOATs, although the route in question was then recorded in the Modified DMS (taken together) as a BOAT. This was in absence of a formal legal event. This cannot be correct.
- 4.33. In absence of a legal event to reclassify the status of the route there was no basis for it to have been recorded as a BOAT. The evidential presumption regarding the conclusive nature of the current Definitive Map has been displaced and there is no clear evidence of public vehicular rights over the way. It will be necessary to establish from the available evidence what the correct status of the route actually is.

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<sup>16</sup> Described in Schedule 1 to the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1983, available at <https://www.legislation.gov.uk/uksi/1983/21/made>



## **5. Presumed dedication under section 31 Highways Act 1980**

- 5.1. In terms of the dedication of a PROW the relevant statutory provision is found in section 31 of the 1980 Act. This requires consideration of whether there has been actual use of a way, by the public, 'as of right' (i.e. without force, secrecy or permission) and without interruption, for a full period of twenty years prior to its status being brought into question. Also, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

### **Date of Bringing into Question**

- 5.2. It is considered that the public right of way was brought into question in 2009 by the making of the first application to modify the DMS made in 2009. The 'relevant period' for the purposes of section 31 of the 1980 Act is 1989 to 2009. No earlier event has been identified that would have brought the public rights into question.<sup>17</sup>

### **Whether or not use during the relevant 20-year period was 'as of right'**

- 5.3. A considerable quantity of user evidence has been received, mainly submitted by equestrians, clearly demonstrating use of the way in question throughout the relevant 20-year period. The objectors challenged various aspects of this evidence. The evidence was considered in detail at the 2019 public inquiry and members are referred to the Order Decision for a detailed summary of this evidence.
- 5.4. Huddersfield 231 was recorded in the Modified DMS as a BOAT in 1985. Section 56(1)(c) of the 1981 Act states that "where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic".
- 5.5. It is considered that *all* public user of the way after the inclusion of a BOAT on the Modified Definitive Map in 1985 (including use with vehicles of all types) would have been 'by right', rather than 'as of right' and thus would not be user that could support a presumption of dedication under section 31 of the Highways Act 1980 ("the 1980 Act") or user from which an intention to dedicate public rights at common law might be inferred.
- 5.6. The same principle applies, in respect of equestrian or pedestrian user, to the period from 1975 to 1985 during which a RUPP was shown on the first Definitive Map.
- 5.7. As all public use in the 'relevant period' for the purposes of section 31 would have been 'by right' not 'as of right' statutory dedication thus fails. It is thus not necessary to consider in further detail in this report the evidence regarding use or availability of the route, or any counter evidence, for the relevant period or any period after the preparation of the first DMS in 1975.
- 5.8. The question of statutory dedication under section 31 was considered at length by the Inspector in the Order Decision (paragraphs 30-59). This included detailed consideration of the user evidence, the means by which this was gathered, whether any use was by permission - express or implied - and other matters relevant to

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<sup>17</sup> Parties at the 2019 public inquiry disagreed on whether, for the purposes of section 31, it was the original (withdrawn) application of 2009 that served to bring the status of the route into question, or the resubmitted application in 2012. The Inspector decided that the 2009 application would have had this effect. There is no evidence that shows an earlier date of bringing into question.

statutory dedication such as evidence of alleged challenges to users. The Inspector found that there had been no statutory dedication.<sup>18</sup>

### **Conclusions regarding presumed dedication under section 31 Highways Act 1980**

5.9. For the purposes of section 31, the way was brought into question by the making of a DMMO application in 2009. The relevant 20-year period is 1989-2009. There has been ample evidence received showing use of the way by equestrians throughout the 20-year period and dating back further. However use by pedestrians and equestrians since 1975 (when first recorded on the DMS) has been 'by right' not 'as of right', due to the legally conclusive nature of the Definitive Map in respect of paths or ways recorded on it. There has been no presumption of dedication of a bridleway. It has not been necessary to reconsider this evidence or any counter-evidence presented by objectors that might have suggested a lack of intention to dedicate.

### **6. Evidence relating to Common Law dedication**

- **User evidence from equestrians (UEFs etc)**
- **Other witness evidence (e.g. persons associated with Nether Moor Farm)**
- **Documentary evidence e.g. from statutory processes re the development and review of the Definitive Map**

6.1. A public right of way may come into existence at common law by the dedication of the owner and acceptance by the public. Dedication may be express (rarely) or implied. Dedication may be inferred where the acts of the owner point to an intention to dedicate. Evidence of the use of a way by the public 'as of right' may support an inference of dedication and may also show acceptance of the dedication by the public.

6.2. At common law there is no presumption of dedication through public user. The burden of proof is on those asserting the public right to show, on the facts, that there was an intention to dedicate. The quality and quantity of public user must be sufficient to bring home to the landowner that a right is being asserted. The passive toleration of public user may indicate acquiescence. Toleration of use is distinct from permission.

6.3. In the Order Decision, the Inspector considered whether an inference of dedication at common law could be implied from use of the Order Route prior to the relevant date of the Modified Definitive Map and Statement (30 April 1985). He concluded that dedication of a bridleway at common law *could* be implied from the evidence of use and the conduct of landowners prior to the 1985 relevant date. However, this was challenged in the application to the High Court. It was subsequently acknowledged in the Consent Order that the Inspector erred in failing to consider the implications of

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<sup>18</sup> The Order Decision cited Circular 1/09, which offers the view that 'rights that cannot be prevented cannot be acquired' and the Supreme Court case of '*R (on the application of Barkas) v North Yorkshire County Council and another*. [2014] UKSC 31.' ("*Barkas*"). In *Barkas*, a town and village green case, the land in question had been maintained as a recreation ground under the now Housing Act 1985, s 12(1). There was a statutory right to use the land for recreational purposes, such use was 'by right' rather than 'as of right' and thus was not a qualifying period of use 'as of right' for lawful sports or pastimes that would support a claim to record a town or village green. A copy of Circular 1/09 is included in Appendix H. The judgment in *Barkas* is available at <https://www.supremecourt.uk/cases/uksc-2013-0035.html>

the Order route being recorded as a RUPP in the first DMS in 1975. Had he done so, different conclusions *may* have been reached. Regardless of this, the Inspector *might* also have come to the same conclusion as to the status of the way.

- 6.4. The conclusive evidential nature of the first Definitive Map from July 1975 means that public pedestrian or equestrian user of Huddersfield 231 after publication of the first DMS would have been 'by right' and not 'as of right'.
- 6.5. Under Section 32(4)(b) of the 1949 Act, the Definitive Map provided conclusive evidence of the existence of pedestrian or equestrian rights at the 'relevant date' given in the Statement accompanying the Draft Map (20 April 1966).
- 6.6. It is argued that as there was no similar clause in the 1949 Act indicating that inclusion of a RUPP on a draft or provisional map was conclusive evidence of the existence of public rights, if (contrary to the first DMS) such rights *did not already actually exist* by 1966, equestrian or pedestrian user in the period 1966 to 1975 would have been 'as of right' Although the Definitive Map of 1975 would (even if it was in error in recording the Order Route as a RUPP) have had retrospective effect in confirming the existence of those rights at the earlier date, this cannot change the nature of any user of the way that may have taken place in the intervening period.
- 6.7. In light of the above, user evidence and other relevant evidence, covering the period up to July 1975, has been considered in detail.
- 6.8. Section 32(4)(b) of the 1949 Act did not provide that the depiction on the Definitive maps of a way as a RUPP was conclusive evidence of the existence of vehicular rights. There was not conclusive evidence of such rights until the recording of a BOAT in 1985. So evidence of use with vehicles prior to 1985 may also be considered. However, there is scant evidence of such use, and strong evidence of vehicular use with permission. This will be detailed in the evidence discussed below).

## **Settlement**

- 6.9. Dedication can only arise under common law where there is a landowner with the legal capacity to dedicate a public right of way. It is common for large estates to be subject to 'settlement', with the land held in trust and typically the eldest son having a tenancy for life. In this case the land was held by the Beaumonts of Whitley and in settlement between 1887 and either the death of the last tenant for life in 1948 or when probate was granted in 1950.
- 6.10. Although there is an absence of user evidence for the period during which the land was subject to settlement, this does not mean that an error was made. It must be There would have been evidence available at the time, some of which may have been lost to us with the passage of time, to warrant inclusion of the route as a public right of way on the first or second Draft Maps and Statements.
- 6.11. There is nothing to indicate that dedication under common law would have been impossible either before or after the land was in settlement. Further, dedication can be inferred in circumstances where a relatively short period of time has elapsed after land has come out of settlement if there has been sufficient user to justify the inference over a combined period extending both after the settlement period and prior thereto. It is presumed that there would have been evidence to have warranted the inclusion of the way as a public footpath on the 1952 Draft Map or as a RUPP in 1966.

- 6.12. It can be concluded that, on balance, no error regarding settlement and capacity to dedicate occurred when the route in question was included on the first or second Draft Maps and Statements, or the first DMS. Nor is there any indication that at any later point in the period up to 1975 the landowners did not have capacity to dedicate.

### **User and other witness evidence to July 1975**

- 6.13. The application to downgrade the recorded status of Huddersfield 231 was supported by User Evidence Forms (UEFs) - also referred to as 'WCA8 forms' - completed by members of the Bradley family or other people closely associated with the farm. Knowledge of some of these people dates back to the 1950s.
- 6.14. In addition, further user evidence was subsequently received, particularly in response to consultation on the 2014 application, from people generally *unconnected* with Nether Moor Farm. This mainly related to claimed equestrian and some pedestrian use of the way. This was mainly in the form of completed UEFs. This evidence was investigated previously (as part of the Leeds City Council investigation) with some people being interviewed about their use. Further Statutory Declarations and / or Proofs of Evidence were later supplied by some witnesses. The evidence was considered in detail during the public inquiry. Only a small part of the user evidence provided by equestrians relates to the period up to July 1975. This type of evidence will be considered first.
- 6.15. Personal data contained in the user evidence has already been released into the public domain having been available for inspection following the making of the previous DMMO and the user evidence being considered in detail at the public inquiry. In light of this, names and other relevant personal data by which persons might be identified have not been wholly redacted in this document.

### **User evidence from equestrians**

- 6.16. The user evidence submitted by equestrians was mainly from riders who were born in the 1960s and who lived in childhood in the generally vicinity of the route in question – the South Crosland or Netherton areas. Several people indicated that their own use commenced in 1975. Only around five people supplied clear evidence of personal use prior to 1975, principally equestrian use. However, they also described use by others walking, riding or cycling.
- 6.17. Witnesses also described the presence of gates and bars or poles across the track and the movements of cattle at the farm, particularly when milking was taking place.
- 6.18. Relevant UEFs are included in Appendix D to this report. Proofs of evidence/ statutory declarations prepared prior to the 2019 public inquiry are included in Appendix E. Notes of telephone interviews carried out as part of the initial investigations (with names redacted) are found at item XXX in the background papers to the Leeds Report.
- 6.19. Sue Chadwick (nee Whitham) stated she had ridden Huddersfield 231 from the age of eight in 1971, initially accompanied by her mother. Her use was perhaps once a week, more often in summer months. (UEF, Statutory Declaration, interview).
- 6.20. Pat Whitham is the mother of Sue Chadwick. (Witness no 25). She described recreational riding and dog walking from 1972 onwards and stated that "Old Mr & Mrs Bradley were happy to talk to passers-by". (UEF).

- 6.21. Jane Whittell (nee Whitham) gave evidence to the public inquiry that she started riding the way at age 5 in 1973. She also described use by others and provided evidence regarding poles and gates and mentioned the awareness of 'old Mr Bradley' (UEF and Proof of Evidence).
- 6.22. Virginia Stewart, born 1965, spent time at weekends and holidays at a farm a short distance to the west of Nether Moor Farm. From the age 6 or 7 (1971 / 72) she became friends with Sue Chadwick (nee Whitham) and Sue's sister, and learned to ride on one of their family's ponies. She acquired her own pony in 1973. She described riding various tracks in the area, including through Nether Moor Farm. (UEF and Proof of Evidence).
- 6.23. Sheina Scott, born 1948, also used the way from 1971 onwards, approximately weekly, for horse-riding or walking (UEF).
- 6.24. Several other witnesses may also have had some use of the way prior to mid-1975. These include Jo Crowther (UEF) and James Whitham (UEF and interview).
- 6.25. Witnesses also consistently described the awareness of Mr Robert Arthur Bradley (variously referred to as Mr Bradley (senior) or 'old Mr Bradley'), or his wife, to use of the way by the public and the positive attitude shown towards users. There is no indication that there was a difference in Mr Bradley's attitude before or after the route being recorded on the 1975 definitive map.<sup>19</sup> This evidence should be considered alongside other evidence regarding the attitude and behaviour of the landowners, and their knowledge of use of the way.

### **Conclusions regarding user evidence to July 1975**

- 6.26. In summary, for the period prior to mid-1975, the documented evidence of use supplied by equestrians is limited and confined to a small number of people whose personal use commenced in the late 1960s / early 1970s. (This does not preclude the *possibility* that there was also other public use prior to the late 1960s, such as that which would have led to the recording of a footpath on the 1952 draft map or RUPP on the second draft map in 1966).
- 6.27. If considering *evidence provided by equestrians alone, and assuming that the way had not already become a public right of way*, the available user evidence would be insufficient to infer that the landowner did intend to dedicate a public bridleway. Although positive weight should also be attached to comments about the knowledge and attitude of Mr Bradley senior. However, the evidence of use must be considered together with all other evidence now available, including evidence provided by the Bradleys in support of their applications to change the recorded status of the way.

### **Evidence from persons associated with Nether Moor Farm (period to 1975). (UEFs and letters, and Proofs of Evidence in Appendix F).**

- 6.28. The witness evidence submitted with the DMMO applications (as well as the user evidence from 2015) is analysed in detail from paragraph 3.91 onwards in the Leeds Report.

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<sup>19</sup> Nether Moor Farm was purchased in 1954 by Messrs H. and A. Bradley who passed away in 1986 and 2005 respectively. Arthur Bradley was frequently mentioned by witnesses, his brother Herbert Bradley much less so - presumably as he was not resident at the farm.

- 6.29. The evidence supplied by the Bradleys has been re-analysed in light of conclusions made regarding use post-1975 being 'by right'.
- 6.30. The witness evidence submitted with the DMMO applications was in the form of user evidence forms (WCA8 forms) completed by, or letters written by, family members, farming neighbours or other persons closely associated with Nether Moor Farm. This includes evidence from Robert Edward Bradley's three sisters ("the Sisters") who lived at Nether Moor Farm in the 1950s – 1970s and who would have intimately known the way in the period up to 1975. There is also some evidence from childhood friends of the Bradley children, visitors to the farm and from contractors.
- 6.31. Several of those who provided evidence submitted with the applications also gave evidence at the public inquiry and their proofs of evidence have also been taken into account. Mr Bradley, the co-applicant, also provided evidence, in the form of several letters to the Council, in particular those dated 13 Jun 2012 (Item ZZZ3 in Background Documents to the Leeds Report) and 4 Dec 2013 (Item ZZZ5), as well as a proof of evidence (included in Appendix F) that in some respects contradicts his earlier evidence.
- 6.32. The evidence with Mr Bradley's application and that given to the public inquiry covers the period both before and after July 1975. Some of the evidence relates solely to the period after July 1975. In this re-analysis evidence solely relating to knowledge of the way after mid-1975 has generally been disregarded as it is of less assistance in establishing the status of the way by mid-1975.
- 6.33. The focus of the original application was refuting that the way carried public vehicular rights. There was no evidence initially provided of any challenge to the use of the way by equestrians or pedestrians.
- 6.34. Thirteen of the fifteen people who supplied evidence in connection with the 2012 DMMO application indicated that they considered the way to be a bridleway. Vehicular use was generally described in terms of visiting the farm or use as a through route with permission of Mr Bradley (senior). A clear distinction was drawn in the initial evidence between vehicular user with permission and accounts of use by horse riders and walkers. The non-vehicular use was not *initially* described as being with permission. There is no indication from the witness evidence initially submitted that equestrian or pedestrian use had ever been challenged or questioned or was by permission.
- 6.35. The Bradleys have since sought to downplay certain aspects of their earlier applications, and the supporting evidence, in particular the suggestion that the route in dispute might be a footpath or a bridleway throughout its length. They indicated that the original applications were coloured by allegedly poor advice received from Council officers.
- 6.36. Several of the witnesses who originally gave evidence have also to some extent modified their evidence, particularly in respect of use of the way by equestrians, and whether such use was with permission. Additional witness evidence submitted prior to the public inquiry also focuses on the allegedly permissive nature of such use. Some of this evidence, particularly where modified with regards to permission, appears to some extent to have been "contrived" to fit the later narrative that no public rights exist.

- 6.37. Various accounts were also given of the existence of gates or other barriers across the way and whether or not use was permissive. These aspects have generally been considered separately below.
- 6.38. The evidence contained in the original witness statements should not be lightly set aside. The user evidence forms indicate on the first page that *“The object of the questionnaire is to reach the truth of the matter, whatever it may be. You are therefore asked to answer the questions as fully as possible and not keep back any information whether for or against the public claim...”*. Witnesses also signed the forms, below the statement *“I hereby certify that to the best of my knowledge and belief, the facts I have stated are true”*.
- 6.39. The Inspector appointed by the Secretary of State also stated that he took the letters and evidence forms to be a reliable recollection of each person, unless other evidence provided showed that this was not the case. (Paragraph 11 in the Order Decision).

### **Bradley family members**

#### **Helen Clark (nee Bradley)**

- 6.40. Mrs Helen Clark (nee Bradley) is the sister of Mr Robert Edward Bradley, the co-applicant. Born in 1954, she lived at Nether Moor Farm until 1975, thereafter continuing to visit the farm. She was resident prior to and throughout the period when the route was recorded on the Draft and Provisional Maps as a RUPP and up to its recording as such on the first Definitive Map in 1975. In her UEF she indicated that she believed the route was a bridleway and described seeing people walking, horse-riding and occasionally pedal cyclists (dates not stated). An accompanying letter (dated 29 Jun 2009) stated:

*“As a child growing up on the farm, I remember the occasional walker and a few horses using the lane, I rode horses on the lane during my teens, we never encountered motor vehicles as this was, were told, a bridle path, not a through road.”*

- 6.41. Mrs Clark’s account clearly covered a period during which any such use *might* have been ‘as of right’. She also stated:

*“My father was happy to allow walkers and horse riders to use the lane but anyone in a vehicle would have been challenged”*.

- 6.42. This would suggest that pedestrian and equestrian use did take place prior to 1975 but went *unchallenged*. Mrs Clark’s evidence strongly indicates that the way was a bridleway and pedestrian and equestrian use was tolerated by her father. At the public inquiry Mrs Clark’s brother Mr Robert Edward Bradley stated that his sister was ‘mistaken’ in her assertion that she had been told by her father the way was a bridle path. (See paragraph 40 in the Order Decision). However, Mrs Clarke did not give evidence at the public inquiry. Reliance must be placed on her written evidence.

#### **Catherine Dixon**

- 6.43. **Mrs Catherine Dixon (nee Bradley)** is another sister of Mr Robert Bradley. Born in 1959, she lived at Nether Moor Farm until 1982. In her UEF she indicated she believed the way to be a bridleway and described use by walkers and horse riders. In an accompanying letter she gave a detailed and cogent account of growing up at the farm. She stated:

*“...it was never travelled by any of our neighbours either by horse or cart or by vehicle and for someone to drive through without stopping to ask permission from my father was unheard of... My father or my brother have never stopped people walking or horse riding along the track and they accepted that this was a reasonable thing to do in the countryside but I can assure you that the general public or even local people have never used this track as a vehicular access to anywhere.” [My emphasis].*

- 6.44. Once again, Mrs Dixon’s evidence draws a clear distinction between public pedestrian or equestrian use - which was unchallenged by Mr Bradley (senior) and without permission - and vehicular use, which amounted to limited permissive access.

### **Susan McPherson**

- 6.45. Susan McPherson is also related to the Bradley family, and used the way for walking and to visit the farm. She stated she had known and used the way from birth in 1948 to 2012 (in reality personal knowledge would be from the early 1950s). On her UEF she ticked boxes indicating the way was believed to be a footpath and a bridleway. She stated that:

*“the lane is private but walkers and horse riders have used it. There is a footpath across the field [i.e. Huddersfield 233] which is mainly used. Very few walkers pass through the farm and down the lane. Most crossed the site and went across the fields”.*

- 6.46. Mrs McPherson gave no indication that pedestrian or equestrian use of any part of the way in question had been with permission. While it is not wholly clear whether the use being described pre-or post-dated the recording of the route on the first Definitive Map, her personal knowledge of the way does date back to the 1950s and 1960s and the evidence is generally consistent with other evidence describing use by walkers and riders during that period. She was very clear about pedestrian use of the part from Sandy Lane (point A) to the field footpath (Huddersfield 233); there is nothing to suggest that persons using the way were not members of the public.

### **Joan Taaffe**

- 6.47. Joan Taaffe (nee Bradley) is another sibling of Robert Edward Bradley. She lived at Nether Moor Farm from birth in 1956 until 1978, thereafter using the way as a visitor. She indicated on her UEF that she believed the way in question to be a bridleway. In an accompanying letter she gave details of her memories of her childhood at Nether Moor Farm. In particular she stated:

*“My childhood memories are of growing up in a peaceful and safe environment in the country. My father often spoke of how the lane to the farm was a private track but he had no objections to horses travelling it and people walking through. If a car drove through he would often stride to the end of the yard to see who it was – they were usually lost and seeking directions but they usually apologised for disturbing us.”*

- 6.48. As these comments refer to *childhood* memories, it is highly likely that these comments regarding her father’s attitude towards equestrians and walkers, (also challenges to vehicular use), would date to the period prior to the production of the first DMS in 1975.



- 6.49. Mrs Taaffe made further negative comments about public vehicular use, and in support of users “*who regularly use it... as they have done for many years*” However it is not clear if the use described relates to the pre or post-1975 periods.
- 6.50. Mrs Taaffe’s evidence is supportive of dedication of a public bridleway at common law. The evidence given also supports the Bradleys’ initial position that public vehicular rights may have been recorded in error.

### **Robert Edward Bradley**

- 6.51. Robert Edward Bradley (letters at ZZZ3 and ZZZ5, Proof of Evidence) is the applicant and current co-owner of Nether Moor Farm. Born in 1964, Mr Bradley’s *personal* knowledge of the way would not predate the recording of a RUPP / CRF in the second Draft Map and Statement in 1966. A letter dated 13 Jun 2012 (Item ZZZ3 in Background Documents to the Leeds Report) provided in support of his application in 2012 to downgrade the way to footpath provided a detailed and cogent account of his knowledge of the way in question and of the history and management of Nether Moor Farm in general. Broadly similar information was provided in a letter dated 4 Dec 2013 (Item ZZZ5) in connection with his application to add a footpath over A-B between Sandy Lane and path Huddersfield 233.
- 6.52. Mr Bradley indicated that the Bradley family had farmed at Nether Moor since the 19<sup>th</sup> century. He strongly criticised the Council [strictly speaking the predecessor authorities] for the process that led to the route being recorded in the current DMS as a BOAT (with non-standard notation used on the map). He strongly indicated that there had been no vehicular use of the route - until very recently - other than members of the Bradley family and agricultural vehicles coming to the farm with permission. It is clear that Mr Bradley recognised the significance of pointing out whether user was permissive or not. Only vehicular use was stated to be permissive.
- 6.53. In the context of denying that there had been general public use with mechanically propelled vehicles Mr Bradley described in detail his father’s knowledge of and attitude towards horse riders and walkers:
- “My father always allowed horseriders and walkers to walk along the lane to visit us and in later years, as a result of his love of horses, he always allowed riders and horses to travel the track. This was not with the intention of creating rights or curtailing rights but because he liked to see the horses and appreciated them as part of his rural life. Horses still travel the track now and I, as my father before me, have always allowed this to happen”.*
- 6.54. There is a clear distinction to be made between granting of permission (to vehicular users) and ‘allowing’ horseriders to travel the route (which suggests knowledge of and toleration of such use). Notwithstanding that Robert Edward Bailey stated that his father had not ‘allowed’ riders to use the route with the intention of creating rights, it may be possible to infer from the evidence of such use that the landowners did intend to dedicate a public bridleway at common law.
- 6.55. In the accompanying commentary on various documents submitted in support of the application, Mr Bradley also commented on one of the schedules drawn up as part of the Review in the 1970s. (Item UU in background documents to the Leeds Report, considered in detail from paragraph 4.7 above). That schedule gave a suggested status of bridlepath for path Huddersfield 231. Mr Bradley stated that this description:

*“can be acceptable as my father allowed horses and walkers to use the path unchallenged but should the same horse have attempted to travel along this track in a horsebox pulled by a landrover I can assure you that he would have stopped them from doing so”.*

- 6.56. The quote above appears to confirm that what was intended by the word ‘allowed’ was that use was unchallenged and tolerated, rather than being with permission, express or implied. Mr Bradley’s evidence of 2012 / 2013 paints a picture of ‘tolerant acquiescence’ to use by equestrians / pedestrians, by both Robert Edward Bradley himself and earlier by his father, rather than such use being with permission. In contrast to vehicular use which he always stated to be permissive.
- 6.57. Mr Bradley did appear to concede that part of the route from Sandy Lane to a stile leading to path Huddersfield 233 (i.e. A-B) was itself public footpath. This is also reflected in the later application received in 2014 to add this part to the Definitive Map as a public footpath.<sup>20</sup>
- 6.58. The evidence submitted up to 2014 contrasts strikingly with the position taken more recently, i.e., that there are no public rights of any description over the route, save possibly a footpath over A-B.
- 6.59. In his proof of evidence, Robert Bradley gave a further account of the ownership of the farm. He indicated that from 1954 onwards the property was owned by the business partnership of J H Bradley and Sons, with the partners being his father Arthur Bradley and uncle Herbert Bradley after the death of John Henry Bradley in 1953.
- 6.60. Notwithstanding the cogent evidence he had given previously, and the evidence of other members of his family, in his proof of evidence from 2019 Mr Bradley refuted the claims that people had used the route without permission of the owners, describing this as ‘pure fantasy’. He asserted that:

*“In the 1960s there was no one walking through at all and the only horse riders were my sister and a couple of people... that grazed their horses on our land for a short period of time... at this time there were no other horses in the area or riding through the farm.”*

- 6.61. Mr Bradley went on to assert that:

*“In the 1970’s again there was very minimal use by the odd walker that my father knew and chatted with. They could only pass through the yard with my father’s or my uncle’s permission”*

He also stated:

*“... I was brought up to believe that the Order Route was privately owned and people could only come onto our land or into the farmyard with our permission. If they wanted to leave towards the Nether Moor Road entrance... they had to have my*

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<sup>20</sup> The 2014 application was made on the basis that as the notation used for Huddersfield 231 on the 1985 map was incorrect, no public right of way of any type is in fact recorded on it. This interpretation is not considered correct. The 2014 application was supported by the same evidence, including witness evidence, as that submitted in 2012, and the cover letter contained similar admissions to those made in connection with the 2012 application.

*father's or my uncle's permission. It was well known locally that it was a private track and that we owned it. All vehicles were ALWAYS challenged and turned back without question..."*

- 6.62. These statements are generally at odds with his earlier evidence and that of his older siblings, except for the permissive nature of vehicular use.
- 6.63. Mr Bradley also described in some detail the locations and details of various gates and other obstructions such as bars or rails that are alleged to have been in place across the track, and how these were used in connection with agricultural operations. He also went into great detail regarding alleged permissions granted to various equestrians and their families and other others, both in the period to mid-1975 and later. These are matters which were considered in some detail at the public inquiry and will be considered separately in this report.
- 6.64. Mr Bradley also made assertions about various more recent activities in the period *after* the way had been recorded on the DMS as a BOAT. Including but not limited to work by Yorkshire Water. It has not been necessary to consider these matters further.
- 6.65. Mr Bradley also provided a supplemental proof of evidence to the public inquiry. This described possible interruptions to use from 1952 onwards in connection with motorcycle trials by Huddersfield Falcons which took place up to several times per year. This was considered in depth at the public inquiry and is considered in the Inspector's decision.

#### **Lewis Osterfield**

- 6.66. The late Lewis Osterfield was born in 1924 and knew of the way from 1937. His grandparents lived and farmed at Knowle Farm (now Greengate Knowle) until 1938, which he visited as a child. He indicated he had been told by his family not to use the way through Nether Moor Farm as it was private land. It appears he later had a business relationship with the Bradleys until 2002, regarding delivery of fuel to the farm. He indicated that:

*"it was not a public right of way of any sort and that the route was a private track to the farm and nobody used (it) other than the farm owner (Bradleys)."*

- 6.67. Mr Osterfield stated he had not seen use by the public. However, the suggestion that there had been no use at all, other than in connection with the farm, is unconvincing when compared with other available evidence.

#### **Robert Bates**

- 6.68. Robert Bates was born in 1944. He described knowledge of the route from the late 1940s onwards in connection with visiting the Bradley family, helping out at the farm, or, with permission, to transport hay by tractor and trailer between Sandy Lane and Nether Moor Road. He indicated that he believed the way to be a bridleway and that he had seen horse riders and walkers using the route – although he did not indicate when such use would have taken place.

#### **Kenneth William Bates**

6.69. **Kenneth Bates** is understood to be a relative of Robert Bates. He also described use of the way as a child. Resident at a hamlet a short distance east of the route in question, Mr Bates stated that:

*“as a boy I occasionally used the Order Route as a short-cut home on my bike. My father, Clifford Bates, always told me that if I needed to use the Order Route, I had to ask permission from Mr Arthur Bradley. On each occasion that I wanted to use the Order Route in this way, I knocked the door at the farmhouse and asked if it was okay to use the Order Route. Arthur Bradley always gave me permission to use it.*

*My father, over the years, had used the Order Route to bring hay down in the summer for the benefit of our family’s farm, but he informed me that he always asked Arthur Bradley if it was okay before doing so.”.*

6.70. Although no dates are given, it is likely that Kenneth Bates’ use would have been in the 1950s or 1960s. A bicycle is legally considered a carriage in English law and the statutory right to ride a bicycle on a public bridleway was only introduced in the Countryside Act 1968. If express permission was requested and given to take a bicycle along the way, this would not count against the possibility that the way was a public bridleway, or footpath, but does support the position that vehicular rights did not / do not exist. The account of his father ‘asking if it was okay’ before using with a vehicle in connection with farming activities is consistent with the accounts of other witnesses.

### **Pauline Goldsbrough**

6.71. **Pauline Goldsbrough** is the brother of Kenneth Bates. She did not indicate her age in her proof of evidence but stated she was retired and had lived at Delves Cottage from the age of 1. This would suggest she had known or used the route as far back as the 1950s or 1960s. However, her own very occasional use is understood to have been with a car in the 1970s, with permission. She indicated that (as a child?) she was told by her father that she had to ask for permission to use the route.

6.72. Mrs Goldsbrough’s evidence to some extent corroborates the suggestion that some use was permissive, but possibly relating to use with vehicles.

### **David George Boothroyd and John Leon Boothroyd**

- **Letter dated 23 Jun 2009 (Item YYY in background papers to the Leeds Report).**
- **Proof of evidence from David G Boothroyd.**
- **Proof of Evidence from John Leon Boothroyd.**

6.73. David Boothroyd and his brother John initially provided a jointly signed written account of knowledge of the route in question from the perspective of growing up on a nearby farm. They asserted that the route:

*“had never been used by the general public nor locals as a drive through”.*

6.74. They also stated:

*“We recall that if someone did want to come up it from Nether Moor Road to the farm they had to ask permission from Mr Arthur Bradley first to do so and a courteous phone call to him was the thing to do. It is accepted that is still the case now. Permission from the Bradleys is still the done thing”.*

- 6.75. While not specifically stated to relate to vehicular use, this description of permissive use is consistent with other accounts of farming neighbours seeking permission before using the route with farm vehicles.
- 6.76. The letter also referred to use by people to walk and use by horse riders, noting that *“the Bradleys have never had an objection to this”*.  
There was no indication such use was with permission.
- 6.77. The letter also mentioned that:  
*“as young boys we used to call for Edward in a morning to walk down to school at Moor End.”*  
Such personal use might be considered to be private in nature, as visitors to the property.
- 6.78. Further to this letter, David Boothroyd gave evidence to the public inquiry. His proof of evidence included additional information not previously given in the earlier letter. In particular he asserted that:  
*“I always asked for and received permission from a member of the Bradley family to use the Order Route from an early age when I was walking to and from Moor End High School when I walked with my brother Leon and Edward Bradley as we were at school together.”*
- 6.79. This account clearly describes the nature of both brothers’ use which would have been as visitors to the property rather than use by permission; the idea of children visiting / meeting a friend on the way to school explicitly asking for and receiving permission is unconvincing.
- 6.80. David Boothroyd also stated that “When we were growing up together I was told by Edward that the local horse riders that occasionally appeared in the Farm’s yard when we were playing in the Farm’s yard or along the Order Route were coming through with Arthur Bradley’s permission.” Again, this does not have the ring of a conversation that children would have. In any case, this does not *prove* that the horse riders referred to had actually been given permission.
- 6.81. John Leon Boothroyd also gave evidence to the public inquiry. He stated that his own use of the track was with the permission of a member of the Bradley family (Arthur or Edward) *“even when going to school”*. He also referred to having seen several named riders who he had been informed had been given permission - although possibly later than 1975 when such use would have been ‘by right’. He also referred to gates and rails having been in place at various points. The issues of gates etc. and of permission are explored in further detail below.

### **Geoffrey Uney**

- 6.82. Geoffrey Uney was born in 1951. Mr Uney indicated he had known the route for over 50 years (i.e. since the 1950s). He indicated that he understood the first part from Sandy Lane to the junction with path Huddersfield 233 to be a public footpath along a private access road. Unlike other witnesses, he indicated that the remainder of the route was not a public right of way, being regularly closed off with gates and never open to the public

*“except by permission of the landowner who allowed occasional use by local equestrian grounds and other foot traffic...”*

- 6.83. This assertion is at odds with other people who gave evidence in 2009 who indicated the way was a bridleway and that there had been wider use. Nonetheless his evidence is weakly supportive of the objectors’ position, while also being strongly supportive of the case that the first part from Sandy Lane to Huddersfield 233 is (at least) a public footpath.

#### **John Philip Dyson.**

- 6.84. Mr Dyson is a family friend to the Bradleys. He stated that he visited Nether Moor Farm at weekends and regularly in school holidays, as a child / young adult (i.e. in the 1960s / early 1970s?). He described playing in the farmyard and the lane. Although he indicated on his UEF that he believed the way to be a bridleway, he also indicated that he could not recall:

*“ever seeing anyone riding horses or driving vehicles up or down the route in question”*

and that

*“We would not have been allowed to play on the route in question if it had been used by vehicles other than farm vehicles belong to Mr & Mrs Bradley (Tractors etc)”.*

- 6.85. With regards to vehicular use, Mr Dyson’s account is consistent with other evidence. However, he also indicated that the way was used by walkers. He included further details about the existence of gates and barriers; that aspect will be considered separately.

#### **Michael George Dyson**

- 6.86. Michael Dyson, born 1958, is the brother of John Dyson and gave a similar account of playing in and around the farmyard as a child / young adult. On his UEF he described the route as a bridleway but did not specifically mention any use by equestrians. He described seeing walkers, noting the lane was gated. He indicated that he did not see any vehicles other than farm vehicles owned by Mr & Mrs Bradley. The evidence is supportive of the way being a public footpath and weakly supportive of bridleway status.

#### **Frank Garside**

- 6.87. Frank Garside knew the way from 1969. He stated he believed the way to be a bridleway, although his own use had been on foot. He indicated that:

*“In all the years I have known this track I have not seen the general public use it as a vehicular route”.*

- 6.88. Mr Garside’s own use *appears* have been as a member of the public (although some association with the Bradley family is assumed). He mentioned use by horse riders. Evidence of personal use in the years immediately prior to July 1975 is supportive of the route being a footpath, and weakly supportive of the way being a public bridleway - corroborating evidence from equestrians who stated they used the way in that period.

## **Conclusions regarding evidence from persons associated with Nether Moor Farm (period to 1975).**

- 6.89. The evidence originally submitted by the Bradleys initially focused on the nature of any vehicular use, with most witnesses denying there had been public vehicular use or giving clear descriptions of such use being challenged by Mr Bradley (senior). There are clear accounts that people associated with neighbouring farms used the way with vehicles by permission, largely for moving agricultural vehicles (possibly also some permissive cycle use). Almost all the witnesses described the route as a bridleway. Most witnesses indicated that there had been some level of use by walkers or riders.
- 6.90. The initial focus was not concerned with equestrian use, although later applications also challenged this, and ultimately the Bradleys' position changed to one of only part being a footpath, then no public rights of any kind subsisting. Most witnesses, including various family members who grew up at the farm, various other relatives, and visitors to the farm described some level of use by horse riders or walkers between the 1950s and 1970s. The evidence paints a picture of tolerance of such use by Mr Bradley (senior).
- 6.91. There was a clear contrast in the descriptions of vehicular use (by permission) and other public use (accepted or tolerated). Although Robert Edward Bradley later sought to downplay the nature of such use, recharacterizing it all as with permission, this picture is not well supported by the evidence as a whole. His own earlier statements also clearly reveal his father's knowledge and attitude towards such use.
- 6.92. The evidence of Robert Bradley's three older sisters is also very significant. Their accounts clearly indicated that they were told by their father that the route was a bridleway; they indicated that it was used by walkers and horse riders with the knowledge of their father.
- 6.93. Various childhood friends of the Bradley family described use of the route as visitors. Some of these witnesses later revised their evidence to describe use by express permission. This is somewhat unconvincing.
- 6.94. In general, the evidence is consistent with the way having been used by the public, on foot and with horses, between at least the mid-1950s (before the relevant date of the second draft map) and 1975, with the knowledge and tolerance of the landowners. Vehicular use is more likely to have been permissive in nature. The earlier evidence and admissions should not be lightly dismissed.
- 6.95. The witness evidence described is supportive of other evidence that indicates that the way had become a public right of way by the 1950s, and is also supportive of the existence of a public bridleway by the mid-1970s, although not public vehicular rights.
- 6.96. Various witness also described the existence of gates and bars / rails across the way. Whether these should be recorded as limitations or conditions is considered in detail below.

## **7. Permission**

- 7.1. As indicated above, for user to be considered 'as of right' it must have been without permission.
- 7.2. In the Order Decision the Inspector considered at length the question of whether user had been with permission of the landowners, either express or implied. Although largely considered in the context of statutory dedication, the Inspector's commentary, particularly in respect of the actions of members of the Bradley family (specifically the late Mr Arthur Bradley), and in relation to agricultural activities and motor cycle events that took place at the farm, are also of some relevance to the question of dedication at common law.
- 7.3. The Inspector's consideration of express permission is at paragraphs 41-46 of the Order Decision. Consideration of whether agricultural activities and motor cycle events are indicative of public use of the way being by implied permission are considered at paragraphs 47-53 in the Order Decision.
- 7.4. The question of express or implied permission was also addressed, in relation to dedication at common law during the period for which there was user evidence (for any period), at paragraph 62 in the Order Decision. The Inspector concluded that *"I do not accept that there was any widespread permission granted by members of the Bradley family in connection with this use. Nor have I found that implied permission can be taken to arise from the agricultural activities or motorcycle events."*

### **Permission for vehicular use**

- 7.5. Whether any vehicular use was permissive was not specifically addressed by the Inspector in relation to common law. It is noted that the witness evidence supplied by the Bradleys, including accounts describing vehicular use by farming neighbours (principally in the context of agricultural activities) is of such use having been by permission.
- 7.6. Catherine Dixon referred to such use having been with permission of her father, Helen Clark and Joan Taaffe also indicated that unauthorised vehicular use would have been challenged by their father. In his original submission Robert Edward Bradley also referred to use by agricultural vehicles with permission, also alluding to this in his later proof of evidence. Other witness evidence provided in connection with the application (e.g. Robert and Kenneth Bates, David and John Boothroyd) describes such use as having been by permission, either granted to themselves or family members. It appears likely that much vehicular use in the two decades leading up to 1975 had been with permission.

### **Whether there was express permission for equestrian or pedestrian use**

- 7.7. The conclusion made regarding vehicular use cannot be drawn in relation to equestrian or pedestrian use. Earlier submissions e.g. by Robert Edward Bradley, and various witnesses draw a clear distinction between vehicular access (permissive or challenged) and other use i.e. by equestrians or pedestrians being 'allowed' e.g. by Mr Bradley senior. Later submissions e.g. to the Public Inquiry sought to downplay this, characterising such use as being by permission. Several accounts of use by childhood friends visiting the property as being by express permission (rather than as visitors) are unconvincing.



- 7.8. Robert Edward Bradley had stated in earlier submissions that his father had ‘allowed’ horse riders and walkers to use the route. The specific examples of this assertion are quoted and considered at paragraphs 6.54 to 6.56 above. This could indicate that his father had viewed the user as being on a permissive basis. It may also be considered to point to such user being by acquiescence rather than by permission.
- 7.9. Mr Bradley also identified specific riders who he claimed had been granted permission, although these predominantly related to the period after 1975. He noted that Sheina Scott indicated on her UEF that she had been given permission ‘by Old Mr Bradley’. However, in the transcript of her later interview she indicated that permission had not been given, merely that *“Old Mr Bradley never said anything about us using it so you knew you were alright to use it”*.
- 7.10. On balance, the evidence does not show that express permission was granted to equestrians or pedestrians in the period up to 1975. That Mr Bradley senior ‘allowed’ such use is more likely to be a description of good-natured tolerance or acquiescence to such use rather than that use being by express permission.

### **Whether there was implied permission**

- 7.11. It is acknowledged by users (for the period before and after 1975) that there were times when they would have to wait when cows were being moved. Gates are generally said to have been open except when such movements took place. Rails were also used for the same purpose, and witnesses referred to a need to open gates or remove rails, sometimes assisted by Mr Bradley senior. There is nothing to indicate that a need to show common courtesy and wait when agricultural activities were taking place should lead to any implication of permission. Any exclusion from the route is likely to have been temporary in nature and does not imply that use was with permission. It would simply be a matter of common courtesy.
- 7.12. Evidence was also supplied by Mr Bradley (in his supplemental Proof of Evidence, and an accompanying letter from the club secretary) in relation to use of land on the farm by the Huddersfield Falcon Motor Cycle Club. Trials were said to have taken place on 2 or 3 Sundays each year, from 1952-3 onwards to the present day. This appears to have involved taping off part of the route by the club to prevent vehicles accessing the track when the trials were taking place and to direct members into car parking fields. Most of the evidence provided of this relates to the more recent period. Nonetheless there is nothing within the user evidence to indicate that anyone’s access was actually prevented in the period up to 1975. The use of the land and any temporary obstructions do not lead to a conclusion that use of the way was with implied permission.

### **8. Limitations**

- 8.1. Witnesses have supplied evidence that indicates that gates, a stile and other obstructions (e.g. removable poles or rails) have been in place at various times. As Nether Moor Farm is a dairy farm such structures would have been used in connection with restricting movement of cattle.
- 8.2. Various documentary evidence exists, both supplied by the Bradleys and discovered as part of the investigation, that may be of relevance to whether such structures are limitations or conditions to any public right of way.
- 8.3. Evidence post-dating mid 1975 has not generally been reconsidered, although it is noted that much evidence covers a period both before and after 1975.

## **Documentary evidence of gates / poles or bars in period prior to mid-1975.**

### **Loose box plan. Dated 1927 (WYAS ref Plan 483 South Crosland UDC). (Item R in background documents to Leeds Report).**

- 8.4. A plan submitted for approval for a 'loose box' abutting the west end of the barn at Nether Moor Farm indicates a gate across the route at or near point B, with the area to the NE marked 'yard'. While the plan is not directly concerned with the gate or the track, there is nothing to indicate this does not reflect the general situation on the ground at that time.

### **Aerial photograph of Nether Moor Farm (c1950s?) (Item Z in background papers to the Leeds Report, higher resolution copy at item OBJ 79 in Appendix G). Photo taking facing north.**

- 8.5. This photograph clearly shows an open gate at point B, with a short length of wall separating the track from access towards the stile on path Huddersfield 233. To the east of the farmyard, at point D two bars or rails can be seen, one lying in the track, a second in the field to the south. No cattle were present, the gate is open, and no bars or rails are in place across the way.

### **Aerial photograph of Nether Moor Farm (undated, but c1970). (Item SS in background documents to the Leeds Report, higher resolution copy at OBJ 81 in appendix G).**

- 8.6. Photo taken facing west. As with the previous aerial photo, a gate at point B can be made out, also a wall alongside. The photo does not clearly show the rails or bars at point D. The gate at B is open, no cattle are present, and there are no rails or bars in place at point D.

### **Plan of proposed toilet (1971). (Item LL).**

- 8.7. Plan for proposed development also indicates a solid line in the position of the gate at point B referred to elsewhere. This provides a little supportive evidence that there was a feature at that point by 1971.

### **Photographs of gates at point C and point D (December 2012). (Items OBJ 106 and OBJ107 in appendix G, additional photograph of gate at C appendix C).**

- 8.8. Photographs supplied by Mr Bradley from 2012 show a metal gate or barrier in situ at point C and no gate at point B. An additional photograph shows a metal gate with a bridle gate to the side. It was stated that these latter gates, at point E, replaced a rail at some point after 2005. The photograph also shows a rail within the lane to the rear of the gate. These gates are referred to by various witnesses.

## **Successive Draft and Definitive Statements**

- 8.9. The first draft statement (1952) makes no mention of gates or other structures on the route through Nether Moor Farm (then path 460) noting that after its junction with path 461 it "*carries through to Sandy Lane without obstruction*". By contrast various 'stepping stiles' were recorded on path 461 (now 233). If any gates existed, they may have been open and thus not recorded, or any rails not in place at the time of survey. Stone stiles on a field footpath would be more obvious and clearly features that should be recorded.

- 8.10. Similarly, no gates or similar features were recorded on the second draft statement for path no. 410 (now Huddersfield 231). The statement was based on surveys in 1965 and 1966. Unavoidable stiles were recorded on path 409 (now Huddersfield 233). This conflicts with photos and other evidence indicating a gate and possibly a stone stile near Nether Moor Farm and removable rails. However, it is possible that any gate may have been open and rails not in position when surveyed, as per the photographs described above.
- 8.11. The first Definitive Map Statement of 1975 fails to record any limitations and conditions. (Normal practice in WRCC and WYMCC was to include these in the 'General' column, with symbols placed on the map, such as 'S' for stile and 'FG' for Field Gate etc.). The complex description of some paths in the earlier Huddersfield Statements had been simplified to remove over complex descriptions. Regrettably details removed included limitations such as stiles and gates. No such items have been included under 'General'. While it would not have been expected that any such features would have been recorded for Hud 231 (as none were previously mentioned in the draft / provisional descriptions), there appears to be a deficiency in the Huddersfield area Definitive Map in general, and therefore the fact that no limitations or conditions are recorded should not be taken as indicating that no paths were subject to limitations or conditions.
- 8.12. The deficiency in the recording of limitations on Huddersfield paths or ways was carried through to the Draft Revision and then Modified Definitive Maps and Statements.
- 8.13. There is documentary evidence of a gate having existed in the 1920s, 1950s, and removable poles or rails having been in use in at least one location in the 1950s, notwithstanding the deficiency in recording of such features in successive Statements. Witness evidence may shed further light on this.

#### **Witness evidence regarding gates or other limitations**

#### **Evidence submitted in connection with the DMMO applications or by objectors to the previous Order. (Focussing on period to 1975).**

- 8.14. Various witnesses who supplied evidence in support of the various DMMO applications or in objection to the previous Order described the existence of gates, stiles and other features.
- 8.15. **Robert Bates: (UEF in appendix F)** mentioned a metal gate by the farm buildings and metal pole halfway down the lane used to manage daily movement of the dairy herd. The gate marked is consistent with the gate identified at point C. A metal rail is identified further down the lane from the end of the farmyard, very approximately consistent with the rail and later gate at point E. Mr Bates' evidence also includes later periods and it is not clear when the gate referred to was installed.
- 8.16. **Helen Clark**, who had been resident at the farm between 1954 and 1975 indicated on a plan 'gate + stiles' in the vicinity of point B, and at gate a point C. She stated that:

*"Gate + stile were situated across the route – during my lifetime at the farm these were used but no longer exist. The other stile (stone) leads to the footpath across the fields and still exists... the old gate was wood and the stile at the side stone. The other gate at the back of the buildings is metal and used for animal management."*

- 8.17. These comments strongly support existence of a wooden gate at point B in the period prior to 1975, in the position seen in the 1950s aerial photo. The existence of a stone stile alongside the gate in the 1950s is supportive of the case that a public footpath had been dedicated at common law, provision having been made for pedestrian use. This is likely to have been within the wall shown in the 1950s and 1970 aerial photo. The other metal gate mentioned is likely to be the gate at point C and post-dated 1975.
- 8.18. Mrs Clark also stated *“metal rails are used across the route to help with the movement of cattle – these are usually between the farm and Nether Moor Road”*. In her letter of 29 Jun 2009, she also mentioned *“use of rails and gates to keep animals in a confined area at different times of the day”*. The positions of rails were not indicated on the plan, but the description was consistent with the rails seen at point D in the 1950s aerial photo or being in existence elsewhere along the lane, i.e. at point E.
- 8.19. **Catherine Dixon** (resident until 1982) stated in her UEF *“Gates rails put in place to herd cows into specific fields off the track.”* She identified the location of a *‘stile and gate’* on a plan in the vicinity of point B – also a *‘rail used only to move cattle around’* some distance east of point E and an additional rail for the same purpose west of point B.
- 8.20. **John P Dyson** indicated on his UEF gates *“Marked on map. To contain dairy cows to farmyard for milking and access to water troughs”*. He marked on the accompanying map a *‘fixed yard gate’* at point C and a removable rail at point E. In a letter of 12/12/11 John Dyson also described a gate and removable poles:
- “There was always a gate across the route in question at the entrance to the farm yard. I have marked on the map the approximate location of that gate. I remember the gate well as my father made the gate for Mr Bradley.... Further down the lane... there was at least one removable metal pole that was suspended from the gate posts across the route in question by either rope or chain, this was to stop dairy cows going further down the lane, as there are no water troughs in the fields on the opposite site of the route in question”*.
- 8.21. **Michael Dyson** (UEF ref 159/7) indicated gates *‘as marked on map’* and stated they had not been locked. The map indicated a farm gate near point C and a *‘moveable barrier to direct cows’* in the general vicinity of point E. His knowledge dates from 1962. When visiting to play at the property as a child, he recalled that:
- “The ‘fixed yardgate’ as marked on the map was always closed on arrival and remained so whilst we were there”*.
- 8.22. He also stated *“Rails, usually a piece of metal pipe hung from a gatepost on either side of the track, this was to stop various cows wandering off down the track”*.
- 8.23. **Nigel Greenwood** used the way since 1960 and recalled a bridle gate / metal farm gate and a metal bar used to help cattle movement, although he was unclear as to dates when these would have been in situ. The gates identified on the plan are at point C and somewhere east of point E.
- 8.24. **Susan McPherson**, a relative of the Bradley family, with knowledge from the early 1950s, indicated two gates (closed but not locked), and a stone stile for access when gate closed. The second gate was recalled as being at the exit from the yard.

- 8.25. **Lewis Osterfield** also recalled an unlocked gate by the farm building east of the junction with path 233 and rails / mobile gates to herd cattle.
- 8.26. **Joan Taaffe nee Bradley** – indicated in her UEF that there were no gates or stiles. This is at odds with other evidence on this point, including that of her siblings.
- 8.27. **Geoffrey Uney** described in his UEF “Several gates / fences across the track to control cattle movements...”.

### **Robert Edward Bradley**

- 8.28. In his cover letter to application 159 (item ZZZ3 in Background Papers to the Leeds Report), Mr Bradley described features shown in the 1950s aerial photograph at item Z.<sup>21</sup> He indicated the position of the gate across the lane at the start of the farmyard, near the junction with path 233. He stated:

*“The gate came across from the stone wall that was built on the right of the stile to the field footpath... Incorporated within the wall that the gate leans on was a stile which was used by walkers when the gate was across. The wall and stile were unfortunately removed approximately 12 years ago [i.e. about 2000] as I was unable to access the yard at the back of my farm buildings with agricultural machinery which is unfortunately becoming bigger and bigger. The removal of this stile has not impeded walkers access - it has actually enabled them to walk the track more easily.”*

- 8.29. It is clear from the landowners’ account that a stile in the wall existed at or near point B until approx. 2000. This confirms the existence of a stile as described by Mr Bradley’s sisters. The accommodation of a route for pedestrians is suggestive of common law dedication of a footpath at some point, probably by the 1950s.
- 8.30. Mr Bradley continued: *“The original gate at point A rotted away and was replaced by a metal gate which is now at point B. This gate is used several times daily to help with movement of cattle from fields to buildings and back again. It is not locked and walkers open and close it in order to continue through”.*<sup>22</sup>

The gate at “point B” (Council’s Point C) is shown in a photo supplied with application 159, included in appendix C and a photo at item OBJ 106 in appendix G.

- 8.31. Mr Bradley also drew attention to the gate and stile visible in the aerial photo at item SS (c.1970) discussed earlier<sup>23</sup> and also to the indication of a gate on the Loose Box Plan of 1927.
- 8.32. Evidence supplied by the Bradleys relating to the period after 1975 also describes replacement of a rail further along the track in recent years with a pair of gates. Accounts also refer to the placing of large boulders within the track near its termination at Nether Moor Road with the intention of preventing access to land by gypsies or travellers or use by 4x4 users. These actions are understood to have been

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<sup>21</sup> A higher resolution copy of this photo, in which various features can be more easily seen, is included as item OBJ 79 in appendix G.

<sup>22</sup> Mr Bradley referred to the ‘gate at point A’ and the ‘gate at point C’. In the Council’s lettering scheme (shown on the plan in Appendix A), point A is at the junction with Sandy Gate, so the gates referred to are at points B and C respectively.

<sup>23</sup> A better-quality copy of this aerial photograph is found at item OBJ 81 in appendix G.

many years after the inclusion of the way on the definitive map and are thus outwith the re-consideration of evidence in this discussion.

### **Evidence from other witnesses**

- 8.33. Evidence from equestrians who used the route also referred to gates and rails or poles at various positions, both before and after 1975, used in connection with restricting movements of cattle. Rails could be moved by users. There also are accounts of this being done by Mr Bradley senior, in particular in relation to a pole at the exit from the yard at point D. Gates were said to be unlocked.
- 8.34. The evidence from these users re gates and rails or poles is generally consistent with evidence from people associated with the farm.

### **Conclusions regarding limitations**

- 8.35. Evidence from people associated with the farm is a little inconsistent as to locations of some structures (particularly poles or rails). However, the documentary evidence and witness evidence generally indicate a wooden gate (at point B) and stone stile in an adjacent wall, near the junction with path Huddersfield 233. (A separate stone stile led on to path 233; this is still extant). The evidence indicates such features were in situ in the 1950s (perhaps in the 1920s), with the pole being replaced with a gate at point C sometime after 1975. The stile survived until 2000, according to Mr Bradley. Based on this it appears likely that a public right of way was dedicated subject to the existence of a gate and a stile at / near point B.
- 8.36. The evidence also shows at least one removable pole or rail, potentially two, existing at an early date. The locations of such features were identified by the Bradleys on a plan at OBJ1 in appendix G. There is some photographic evidence to support this, including a photograph from the early 1950s showing removable rails or poles at point D.
- 8.37. In the Order Decision the Inspector concluded that a wooden gate was in place until the early 1970s near to Mr & Mrs Bradley's present house (point B on plan accompanying this report); this was later replaced by a gate further to the east between the farm buildings (point C), with removable rails having been in place at two specific points (D and E). The rail or pole at point E having been replaced more recently by gates. The Inspector concluded that the gate at B and the two rails were limitations that should be recorded in the Statement.
- 8.38. A reconsideration of the evidence has led to the same conclusion as the Inspector. On balance it is considered that the public right of way will have been dedicated subject to the existence of removable rails at points D and E. Gates at point C and point E are not considered to be limitations to the public right of way.

## **9. Summary and overall conclusions**

- 9.1. Historical documentary evidence, particularly for the period prior to the early 1950s, shows the existence of a through route between Sandy Lane and Nether Moor Road and linking to a field footpath since at least the 19<sup>th</sup> century. However, there is little direct evidence of legal status. Evidence shows temporary alterations to the route in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries due to quarrying; this is less likely to have taken place over a vehicular highway. Nonetheless the evidence in general is not incompatible with the route being a public highway of some type.

- 9.2. There is evidence from the Definitive Map process indicating that the way was at least a public footpath by the early 1950s, being recorded on the first draft map in 1952 as a public footpath. The definitive map process was restarted in the mid-1960s and the route recorded on a second draft, provisional and definitive map and statement as a Road Used as a Public Path (RUPP). This became legally conclusive evidence of the existence of rights of way on foot and riding or leading a horse, with such rights possibly having come into existence by 1966.
- 9.3. Although the evidence on this aspect considered to be finely balanced, the *Trevelyan* presumption that the way was correctly recorded as a RUPP on the first Definitive Map in 1975 has been rebutted by the discovery of the 1974 Memo which was critical of the Huddersfield County Borough Provisional Map and Statement and the classifications of routes contained within it. However, the evidence as a whole is supportive of the way being a public right of way of some description.
- 9.4. A review of the DMS in the late 1970s was a Special Review under Part III of Schedule 3 to the Countryside Act 1968 for the purposes of reclassification of RUPPs. A suggested status of bridleway was later changed to BOAT when the draft revision map and statement was produced in 1979. Either status might have been possible under the terms of the Special Review, although there is no clear evidence of public vehicular use. There is no indication that there was new evidence that the way was only a footpath, or any new evidence that would support the deletion of all or part of Huddersfield 231 from the DMS. No objection was made to the proposed status of BOAT.
- 9.5. The review was formally abandoned in 1984 and an 'omnibus' DMMO was made in October 1985 to modify the DMS to show changes included in the draft revision map and statement that had not received objections. It appears that that Order neglected to include reclassification of any RUPPs in Huddersfield previously proposed to be reclassified as BOATs. Nonetheless these routes were then shown as BOATs in the modified DMS.
- 9.6. In absence of a formal legal event there is no basis for Huddersfield 231 to be recorded on the current DMS as a BOAT. It has been necessary to consider the evidence as a whole to determine to correct status of the route. Including in relation to presumed dedication under section 31 of the Highways Act 1980 and dedication at common law.
- 9.7. For the purposes of Section 31, the way was brought into question by the making of a DMMO application in 2009, proposing downgrading of recorded status to bridleway (later amended to footpath). The relevant 20-year period is 1989-2009. There is ample evidence received showing use of the way by equestrians throughout the 20-year period and dating back further. However use by pedestrians and equestrians since 1975 (when first recorded on the DMS) has been 'by right' not 'as of right', due to the legally conclusive nature of the Definitive Map in respect of paths or ways recorded on it. There has been no presumption of dedication of a bridleway, as during the period that it was recorded on the definitive map as a RUPP or BOAT such use could not have been prevented. It has not been necessary to reconsider this evidence, or any counter evidence presented by objectors that might have suggested a lack of intention to dedicate during the relevant period.
- 9.8. Consideration of whether dedication took place at common law prior to July 1975, (particularly dedication of a public bridleway) requires consideration of user evidence supplied by equestrians and other users. Evidence of use which solely took place after the production of the first DMS in July 1975 is of little relevance. The direct

evidence of equestrian use is limited to a small number of riders, generally use in childhood from the very late 1960s to mid-1970s. *If considered in isolation*, this evidence would be insufficient to infer that the landowners intended to dedicate a public right of way, notwithstanding positive comments regarding the knowledge and positive attitude of the late Mr Arthur Bradley towards equestrians. However other evidence has been considered, including from various persons associated with Nether Moor Farm.

- 9.9. It is acknowledged that the land crossed by the way in question was subject to 'settlement' between 1887 and 1948 (the death of the last tenant for life) or 1950. During this period there may have been no person with capacity to dedicate a public right of way. However, on balance, the evidence shows no error regarding settlement and capacity to dedicate occurred when the route in question was included on the first or second Draft Maps and Statements, or the first DMS. Nor is there any indication that at any later date the landowners did not have capacity to dedicate.
- 9.10. Evidence from persons associated with Nether Moor Farm, covering the period to 1975, is generally supportive of the way being a public bridleway, being initially described by most witnesses as such. It is clear that such evidence confirms use of the way, by the public, on foot and horseback by the early 1950s and continuing through the period to 1975 and beyond. This is consistent with the later user evidence from equestrians and broadly with the status described in the first definitive map. Landowners (particularly Mr Arthur Bradley) were aware of and tolerant of such use. Witness evidence does not support the existence of public vehicular rights.
- 9.11. This includes evidence from various members of the Bradley family, including Robert Edward Bradley and his siblings, as well as visitors to the farm. Although Robert Bradley now asserts that there is no public right of way of any kind and that user was by permission (generally by his father), earlier submissions did not express this view. There is a clear distinction in the evidence between use by equestrians and walkers (unchallenged and without permission), and vehicular use (primarily agricultural use by neighbours, with express permission). Although some witnesses have revised their evidence, the earlier evidence and admissions should not be lightly dismissed.
- 9.12. The evidence indicates that vehicular use prior to 1975 was with express permission and generally confined to neighbouring farmers using the way with agricultural vehicles. By contrast there is little credible evidence that use by equestrians or walkers in the period to 1975 had been with express permission. That Arthur Bradley 'allowed' such use is more likely to be tolerance or acquiescence rather than expressly granting permission.
- 9.13. Evidence regarding agricultural activities in the farmyard area (movement of cattle), and a need for riders or walkers to show courtesy and wait while animals were being moved does not lead to a conclusion that use was by implied permission. Nor is the evidence of very occasional unavailability of the route in connection with events held on the land by a motorcycle club particularly supportive of use being with implied permission.
- 9.14. Although the evidence shows, on balance that the way should be recorded as a public bridleway rather than a BOAT, it may have been dedicated subject to limitations or conditions. That no features such as gates are recorded in the map and statement may reflect a general deficiency in the DMS for the former Huddersfield County Borough.



- 9.15. Evidence from persons associated with Nether Moor Farm, and other witnesses including equestrians, indicates that gates and removable rails, poles or bars were in use at various points. This is supported by photographic and other documentary evidence. Evidence indicates a gate existed at point B (on the plan in appendix A to this report) until c.1970, with an adjacent stile in situ until around 2000. Removable rails appear to have been used to contain cattle, with evidence supporting such features at points D and E. These should be recorded as limitations in the statement. A gate at point C, gates at point E and boulders at point F are later features that should not be recorded as limitations.
- 9.16. The overall conclusion is that there is sufficient cogent evidence to show that Huddersfield 231 was recorded on the West Yorkshire Modified Definitive Map and Statement in error and to outweigh any presumption that it is correctly recorded. Further, the evidence shows, on the balance of probabilities, that the way should instead be recorded as a public bridleway, with the addition of limitations at points B, D and E described above.
- 9.17. An Order should be made to downgrade the recorded status of Huddersfield 231 from BOAT to bridleway, including variation of the particulars contained within the statement to include a gate and stile, and two removable poles or rails.